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TRANSCRIPT OF RECORD

Supreme Court of the United States OCTOBER TERM, 1961

No. 40

DAVID D. BECK, PETITIONER,

U8.

WASHINGTON.

ON WEIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

MAN

PETITION FOR CERTIORARI FILED JANUARY 19, 1961 CERTIORARI GRANTED APRIL 2, 1961

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 40

DAVID D. BECK, PETITIONER,

vs.

WASHINGTON.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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IN THE

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

30967

STATE OF WASHINGTON, Plaintiff,

VS.

DAVID D. BECK, also known as DAVE BECK, Defendant.

INDICTMENT-Filed July 12, 1957

David D. Beck, also known as Dave Beck, is accused by the Grand Jury of the County of King, State of Washington, by this indictment, of the crime of Grand Larceny, committed as follows:

He, the said David D. Beck, also known as Dave Beck, in the County of King, State of Washington, on or about the third day of February, 1956, then and there having in his possession, custody or control as agent, bailee, employee, servant, officer or trustee, certain personal property, to-wit: the sum of \$1900.00, lawful money of the United States, the property of the Western Conference of Teamsters, an unincorporated association organized as a labor union, the said \$1900.00 being derived from the sale to one Martin B. Duffy on or about the thirtieth day of January, 1956, of one 1952 Cadillac automobile, motor number 526004746, the property of said Western Conference of Teamsters, the said David D. Beck, also known as Dave Beck, in the County of King, State of Washington, on or about the third day of February, 1956, then and there did [fol. 2] wilfully, unlawfully and feloniously secrete, withhold or appropriate the said \$1900.00 to his own use with intent to deprive and defraud the owner thereof;

Contrary to the statute in such case made and provided, and against the peace and dignity of the State of Washington.

-Plea of Not Guilty-

Dated at Seattle, in said County of King, State of Washington, this 12th day of July 1957.

Charles O. Carroll, Prosecuting Attorney of King County.

Indorsed: A true bill

Andrew C. Dalgleish, Foreman of the Grand Jury of King County.

Copy rec'd 7-12-57, W. Wesselhoeft, Atty for Def.

[fol. 3] Witnesses: M. J. Devine, Frank E. Dutton, M. B. Lake, Martin B. Duffy, Donald D. McDonald, Ken-Eline, David L. Forrest, Alfred Roger Hill, Charles V. Leaf, Carl E. Houston, Ludwig Lobe, Samuel B. Bassett, Frank W. Brewster, Marcella M. Guiry, William H. Marx, Russell Schley, Louise Sartor, E. E. Hepper, J. J. David, Roger Jones, William F. Devin.

[fol. 14] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

No. 30967

[Title omitted]

ORDER ON AMENDED MOTION FOR ORDER PERMITTING DEFENDANT TO PUBLISH AND INSPECT TRANSCRIPT OF GRAND JURY VOIR DIRE AND ALLOWING DEFENDANT TO PUBLISH AND INSPECT TRANSCRIPT OF SAID GRAND JURY PROCEEDINGS—September 20, 1957

This Matter having come on for hearing upon the defendant's motion for order permitting defendant to publish and inspect transcript of grand jury voir dire and allowing defendant to publish and inspect transcript of said grand jury proceedings;

And the Court having heard argument of counsel on September 16, 1957 and having considered the authorities submitted,

It Is Hereby Ordered and Adjudged that:

- (1) The aforesaid motion is and shall be granted insofar as it relates to proceedings in Open Court;
 - (2) The aforesaid motion is otherwise denied.

An exception is allowed to the defendant.

The defendant is hereby granted until October 18, 1957 to file motions to set aside the indictment.

Done in Open Court this 20 day of September, 1957.

Lloyd Shorett, Judge.

Presented by:

Charles S. Burdell, Attorney for Defendant.

Approved as to Form:

Charles Z. Smith, Deputy Pros. Atty.

ffol. 15]

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

No. 30967

[Title omitted]

ORDER DENYING MOTION TO STRIKE FROM TRIAL CALENDAR
—September 23, 1957

This Case having been heard on September 20, 1957 on motion of the defendant to strike the case from the trial calendar; and the Court having heard argument of counsel,

It Is Hereby Ordered, Adjudged and Decreed that the motion of the defendant to strike the case from the trial calendar is hereby denied, without prejudice to the right 4

of the defendant to file a timely motion for continuance of the trial date.

An exception is hereby allowed to the defendant.

Done in Open Court this 23 day of September, 1957.

Malcolm Douglas, Judge.

Presented by:

Phil H. De Turk, Attorney for Defendant.

Approved:

Charles Z. Smith, Deputy Prosecuting Attorney.

[fol. 16] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

No. 30967

[Title omitted]

MOTION FOR CONTINUANCE—Filed October 2, 1957

Now Comes the defendant Dave Beck, by and through his attorney, and moves:

For reconsideration of the oral motion previously made to strike the above case from the trial calendar; and

For an order continuing the trial of the above entitled case, which is now set for October 28, 1957, to a date not earlier than May 1, 1958, or to such other date as the court shall find that the defendant may be accorded a fair and impartial trial, with full right of representation by counsel and time within which to prepare his defense, and with right of the defendant to move for a further continuance upon a showing that such continuance is necessary to protect the aforesaid rights of the defendant.

This Motion is based upon the files and records herein, including the affidavit of Charles S. Burdell, and upon Article I, Sections 3 and 22 of the Washington State Con-

stitution and upon Amendment X of the Washington State Constitution, and upon Amendment VI and XIV to the Constitution of the United States.

Charles S. Burdell, Attorney for Defendant.

[fol. 29]

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY
No. 30967

[Title omitted]

MOTION FOR CHANGE OF VENUE-Filed October 3, 1957

Now Comes the defendant, David D. Beck, also known as Dave Beck, by and through his attorney, Charles S. Burdell, and respectfully moves that the venue of the aforesaid action be transferred and removed from King County, State of Washington, to Whatcom County, State of Washington or Snohomish County, State of Washington, on the ground that it is and will be impossible for said defendant to obtain a fair, impartial trial in King County by reason of hostility and prejudice against the defendant existing among and throughout the population of King County.

This Motion is based on the files and records herein and on the affidavit of Charles S. Burdell attached hereto and made a part hereof.

Charles S. Burdell, Attorney for Defendant.

[fol. 30]

[File endorsement omitted]

No. 30967

Application of Motion for Change of Venue—Filed October 4, 1957

State of Washington, County of King, ss.:

Charles S. Burdell, being first duly sworn, on oath deposes and says:

That he is one of the attorneys for the defendant herein; that he has previously filed affidavits and exhibits in this case illustrating and referring to newspaper reports and other publicity media which have resulted in hostility and prejudice towards the defendant herein among and throughout the population of King County, State of Washington.

That affant is advised and believes, and therefore avers, that similar publicity has been circulated and distributed throughout the State of Washington, and throughout the United States, and that there exists throughout said State and throughout the United States an attitude and atmosphere of extreme hostility and prejudice towards the defendant, but affiant is further advised and believes, and therefore avers, that such hostility and prejudice is less extreme and less intense in the counties of Whatcom and Snohomish, State of Washington, because there is only one television station located in Whatcom County, and none located in Snohomish County, and that television signals from stations located in King County reach a smaller proportion of the communities of Whatcom and Snohomish Counties than of King County; that newspapers published [fol. 31] in King County have emphasized and prominently displayed newspaper reports of an adverse and disparaging nature to a greater degree than have newspapers published in Snohomish County and Whatcom County.

That affiant has observed and is advised, and therefore avers, that jury panels selected in King County, if not invariably, include employees of the Boeing Airplane Company; that within recent years there has been a bitter jurisdictional dispute between the International Brotherhood of Teamsters and Aeromechanics Union concerning the right to represent employees of the aforesaid company; that affiant is advised and believes, and therefore avers, that said dispute has resulted in an attitude of bitterness, prejudice and hostility among employees of the aforesaid Boeing Airplane Company against officers and representatives of the International Brotherhood of Teamsters, including the defendant herein.

That in view of the foregoing circumstances, and other exhibits and affidavits on file in the above entitled case, affiant believes and therefore avers that although an attitude of hostility and prejudice against the defendant exists throughout the State, such attitude is less extreme and in-

tense in Whatcom County and Snohomish County.

Charles S. Burdell

Subscribed and sworn to before me this 3rd day of October, 1957.

Donald McL. Davidson, Notary Public in and for the State of Washington, residing at Seattle.

[fol. 37] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

No. 30967

[Title omitted]

ORDER RE MOTION FOR CONTINUANCE-October 11, 1957

This Cause having come on for hearing upon the defendant's motion for reconsideration of the oral motion previously made to strike the above case from the trial calendar, and for an order continuing the trial of the above entitled case to a date not earlier than May, 1958, with right of the defendant to move for a further continuance; and

It having been stated by counsel for the defendant that the aforesaid motion is based (1) upon the ground that an attitude of prejudice and hostility exists within King County toward the defendant, so that a fair and impartial trial cannot be had on any date prior to May 1, 1958, and possibly thereafter; and (2) upon the ground that the additional time is necessary to the defendant for the preparation of his defense; and

The Court having heard argument of counsel and having considered affidavits and memoranda of law; and

The Court being of the opinion that the attitude toward the defendant within King County will not be substantially different in May, 1958 than it is at the present time, or [fol. 38] will only be slightly different;

Now, Therefore, It Is Hereby Ordered, Adjudged and Decreed:

That the defendant's motion, insofar as it is based upon the ground designated as (1) above, is hereby denied;

That the motion, insofar as it is based upon the ground designated as (2) above, is granted, and the above entitled case is hereby set for trial on December 2, 1957.

An exception is hereby allowed to the defendant from the above ruling insofar as it relates to the denial of the motion on the ground designated in (1) above.

Done in Open Court this 11th day of October, 1957.

Malcolm Douglas, Judge.

Presented by:

Charles S. Burdell, Of Ferguson & Burdell, Attorneys for Defendant.

Approved as to Form:

Charles Z. Smith, Deputy Prosecuting Attorney.

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY
No. 30967

[Title omitted]

ORDER DENYING MOTION FOR CHANGE OF VENUE— October 11, 1957

This Cause having come on for hearing on Oct. 7, 1957 upon the defendant's motion for change of venue, and the Court having heard argument of counsel and considered the authorities submitted by counsel; and being fully advised in the premises, now, therefore,

It Is Hereby Ordered, Adjudged and Decreed that the defendant's motion for change of venue shall be and is hereby denied.

Exception is allowed to the defendant.

Done in Open Court this 11th day of October, 1957.

Hugh Todd, Judge.

Presented by:

Charles S. Burdell, Of Ferguson & Burdell, Attorneys for Defendant.

Approved as to Form:

Charles Z. Smith, Deputy Prosecuting Attorney.

[fol. 97]

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

No. 30967

[Title omitted]

MOTION TO SET ASIDE AND DISMISS INDICTMENT—Filed October 18, 1957

Comes Now David D. Beck, also known as Dave Beck, defendant herein, by and through his attorneys of record herein, and respectfully moves to set aside and dismiss the indictment on the following grounds:

- 1. That the grand jurors were not selected, drawn, summoned, impaneled or sworn as prescribed by law.
- 2. That unauthorized persons, not required or permitted by law to attend sessions of the grand jury were present before the grand jury during the investigation of the allegations of the indictment.
- 3. That persons other than the grand jurors were present before the grand jury during consideration of the matters and things charged in the indictment.
- 4. That the proceedings of the grand jury which returned the indictment were conducted in an atmosphere of extreme bias, prejudice and hostility toward this defendant, and that said atmosphere was in part created by the Prosecuting Attorney and by persons acting or claiming to act upon his behalf; all of which was prejudicial to this defension. [fol. 98] dant and which has denied and will continue to deny him rights guaranteed under the 14th Amendment of the Constitution of the United States, Amendment 10 of the Constitution of the State of Washington, and Article I, § 3 of the Constitution of the State of Washington.

- 5. That by reason of extreme bias, prejudice and hostility toward the defendant herein, contributed to in part by the conduct of the Prosecuting Attorney and persons acting or claiming to act upon his behalf, it is and will be impossible for the defendant to secure and obtain a fair and impartial trial in the jurisdiction of this Court, all of which is and will be prejudicial to this defendant and which will constitute a denial of his rights guaranteed under the 14th Amendment of the Constitution of the United States, Amendment 10 of the Constitution of the State of Washington, and Article I, § 3 of the Constitution of the State of Washington.
- 6. That the Court erred in its instructions and directions to the Grand Jury to the prejudice of the defendant and in denial of rights guaranteed under the 14th Amendment of the Constitution of the United States, Amendment 10 of the Constitution of the State of Washington, and Article I, § 3 of the Constitution of the State of Washington.
- 7. That there were excluded from the Grand Jury persons of defendant's financial, social and business class and occupation, contrary to the 14th Amendment to the Constitution of the United States, and contrary to Article I, § 3 of the Constitution of the State of Washington.
- [fol. 99] 8. That the defendant herein was required and compelled to give evidence against himself, contrary to the provisions of Article I, § 9 of the Constitution of the State of Washington and the 5th and 14th Amendments of the Constitution of the United States.
- That the Grand Jury committed misconduct in violation of RCW 10.28.085 and RCW 10.28.100.

This motion is based upon all of the files, records, transcripts, exhibits and affidavits herein.

Ferguson & Burdell, Attorneys for Defendant.

[File endorsement omitted]

[fol. 101]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY
No. 30967

[Title omitted]

CHALLENGE TO GRAND JURY-Filed October 18, 1957

Comes Now the defendant herein and challenges each and all of the members of the grand jury which returned the indictment herein for the reason and on the grounds that the Court which impaneled said grand jury made no determination as to whether a state of mind existed on the part of any juror such as would render him unable to act impartially and without prejudice.

Ferguson & Burdell, Attorneys for Defendant.

[fol. 102] [File endorsement omitted]

In the Superior Court of the State of Washington

FOR KING COUNTY No. 30967

[Title omitted]

PLAINTIPF'S REPLY AND ANSWER TO DEFENDANT'S MOTION FOR BILL OF PARTICULARS—Filed November 1, 1957

Comes Now the Plaintiff, State of Washington, appearing by and through Charles O. Carroll, Prosecuting Attorney in and for the County of King, by and through his deputy, Charles Z. Smith, and by way of reply and answer to defendant's motion for bill of particulars does state as follows:

Ι

That the defendant is not entitled to a bill of particulars under the laws of the State of Washington;

That the indictment is sufficient to indicate to the defendant the nature and cause of the accusation against him under the laws of the State of Washington.

Done This 1st day of November, 1957.

Charles O. Carroll, Prosecuting Attorney, By Charles Z. Smith, Deputy Prosecuting Attorney.

[fol. 103] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY
Number 30967

[Title omitted]

PLAINTIFF'S REPLY AND ANSWER TO DEFENDANT'S MOTION TO SET ASIDE AND DISMISS THE INDICTMENT—Filed November 1, 1957

Comes Now the Plaintiff, State of Washington, appearing by and through Charles O. Carroll, Prosecuting Attorney in and for the County of King, by and through his deputy, Charles Z. Smith, and by way of reply and answer to defendant's motion to set aside and dismiss the indictment, does state as follows:

I

That the plaintiff denies each and every material allegation contained in defendant's affidavit and motion to set aside and dismiss the indictment;

II

That defendant's motion and affidavit are insufficient as a matter of law:

That the grand jurors were selected, drawn, summoned, impaneled and sworn as prescribed by the laws of the State of Washington;

ľV

That no unauthorized persons were present before the grand jury during the investigation of the allegations of the indictment;

[fol. 104]

V

That no unauthorized persons were present before the grand jury during consideration of the matters and things charged in the indictment;

VI

That the allegations made in defendant's motion, items 4, 5, 6, 7, 8 and 9, are not proper grounds for setting aside or dismissing an indictment under the laws of the State of Washington.

Dated This first day of November, 1957.

Charles O. Carroll, Prosecuting Attorney, By Charles Z. Smith, Deputy Prosecuting Attorney.

[fol. 105]

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

No. 30967

[Title omitted]

PLAINTIFF'S REPLY AND ANSWEB TO DEFENDANT'S CHALLENGE TO GRAND JUBY—Filed November 1, 1957

Comes Now the Plaintiff, State of Washington, appearing by and through Charles O. Carroll, Prosecuting Attorney in and for the County of King, by and through his deputy,

5

Charles Z. Smith, and by way of reply and answer to defendant's so-called challenge to the grand jury, does state as follows: that there is no provision under the laws of the State of Washington for such a challenge.

Done This 1st day of November, 1957.

Charles O. Carroll, Prosecuting Attorney, By Charles Z. Smith, Deputy Prosecuting Attorney.

[fol. 118] [File endorsement omitted]

In the Superior Court of the State of Washington For King County

[Title omitted]

MOTION FOR SUBPORNAS-Filed November 4, 1957

Comes Now the defendant herein and respectfully applies for an order permitting the defendant to subpoena Mr. William F. Devin, 1310, 1411 Fourth Ave. Bldg., Seattle 1, Washington, and Mr. Victor D. Lawrence, 610 Fourth & Pike Bldg., Seattle 1, Washington, for the purpose of obtaining their testimony in pre-trial proceedings, at a time and place to be designated by the court, for the purpose of eliciting testimony from said witnesses concerning (1) whether or not either or both of said witnesses were engaged in the private practice of law during the period when they were engaged in attendance upon the sessions of the Grand Jury which returned the indictment herein, or were otherwise engaged in performing legal services in connection with the investigation of said Grand Jury; and (2) the conduct of attorneys who appeared before said Grand Jury in the course of the presentation of testimony and evidence thereto.

And the defendant further applies for an order permitting defendant to subpoen Jack Stratton, 3515 West 68th, Seattle, Washington and Fred Verschuren, Jr., Teamsters Building, Fifth and Denny Way, Seattle, Washington, for [fol. 119] the purpose of obtaining their testimony in pre-

trial proceedings, at a time and place to be designated by the Court, for the purpose of eliciting testimony from said witnesses concerning the conduct of attorneys who appeared before said Grand Jury in the course of the presentation of testimony and evidence thereto.

This motion is based upon the files and records herein, including affidavits of Charles S. Burdell and W. Wesselhoeft, relating to their information and belief concerning

conduct of the Grand Jury proceedings.

Dated this 4th day of Nevember, 1957.

Charles S. Burdell, Attorney for Defendant.

State of Washington, County of King, ss,:

Charles S. Burdell, being first duly sworn on oath, deposes and says:

That William F. Devin and Victor D. Lawrence attended

sessions of the Grand Jury prior to June 18, 1957.

That affiant is also advised and believes, and therefore avers, that the aforesaid William F. Devin and Victor D. Lawrence were engaged in the private practice of law throughout the period of time when they appeared before and performed services in connection with the Grand Jury and the Grand Jury proceedings; that affiant believes that this fact constitutes grounds for setting aside the indictment herein; that he desires to interrogate the aforesaid [fol. 120] persons with respect to this subject.

That affiant believes that conduct which took place during the interrogation of the witnesses Jack Stratton and Fred Verschuren, Jr. before the Grand Jury constitutes grounds for dismissal or setting aside of the indictment herein, and that affiant desires to interrogate all of the witnesses named in the attached motion with respect to

said conduct.

Affiant further certifies that in his opinion the testimony of the aforesaid witnesses is material to the defense in

this case, with particular respect to the validity of the Grand Jury proceedings and the validity of the indictment.

Charles S. Burdell

Subscribed and sworn to before me this 4 day of November, 1957.

Virginia H. Berk, Notary Public in and for the State of Washington, residing at Seattle.

[fol. 121] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

[Title omitted]

ORDER RELATIVE TO DEMURREE; MOTION TO SET ASIDE AND DISMISS INDICTMENT; CHALLENGE TO GRAND JUBY; MOTION FOR BILL OF PARTICULARS; AMENDED MOTION FOR EXAMINATION OF DOCUMENTS; AND MOTION FOR SUBPOENAS—November 7, 1957

These Matters having come on for hearing before the undersigned judge of the above-entitled court on November 4, 5, and 7, 1957, and the court having heard argument of counsel for both parties and having considered authorities submitted by counsel for both parties,

It Is Hereby Ordered and Adjudged as follows:

- 1. The demurrer to the indictment shall be and it is hereby overruled and denied. An exception thereto is hereby allowed to the defendant:
- 2. The motion to set aside and dismiss the indictment shall be and is hereby overruled and denied in its entirety. An exception thereto is hereby allowed to the defendant;
- 3. The challenge to the grand jury shall be and is hereby overruled and denied. An exception thereto is hereby allowed to the defendant;
- 4. The motion for bill of particulars is hereby overruled and denied in its entirety. An exception thereto is hereby allowed to the defendant;

- 5. The motion for disclosure to the defendant of the transcript of the testimony of Jack Stratton and Fred Verschuren, Jr., is hereby denied, and an exception to said ruling is hereby allowed to the defendant; provided, however,
 - (a) That the defendant may cause to be transcribed, at his own expense, the entire testimony of the aforesaid witnesses, said transcription to be certified upon oath of the official court reporter; that [fol. 122] the transcription shall be sealed and retained in the file of this case, to be made available to the defendant after the trial of this case and Cause No. 30966 in the event of a conviction and subsequent appeal. An exception to the ruling set forth in Paragraph 5 (a) is hereby allowed to the defendant;
- 6. Paragraph 1 of the amended motion for examination of documents is granted; provided, however, that such examination and copying shall take place on November 7 and 8, 1957, between the hours of 9:00 A. M., and 5:00 P. M., at the office of the prosecuting attorney; and provided further that such examination and copying shall be conducted by a duly authorized representative of the defendant and his counsel and in the presence of a representative of the prosecuting attorney so desires. An exception to this ruling is hereby allowed to the plaintiff;

7. Paragraph 2 of the amended motion for examination of documents is hereby denied in its entirety. An exception to said ruling is hereby allowed to the defendant;

8. The motion for subpoenas is hereby denied. An exception to this ruling is hereby allowed to the defendant.

Done in Open Court this 7th day of November, 1957.

Lloyd Shorett, Judge.

Presented by: John J. Keough of Attorneys for Defendant.

Approved as to form: Charles Z. Smith, Deputy Prosecuting Attorney.

[fol. 123]

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

No. 30967

[Title omitted]

MOTION FOR CONTINUANCE-Filed November 7, 1957

Comes Now the defendant David D. Beck, also known as Dave Beck, and respectfully moves for a continuance of the trial of the above entitled case for one (1) month, or to such other time as the Court deems sufficient to allow prejudice and hostility to subside, on the ground that there continues to exist throughout the jurisdiction of this Court, as a result of hostile and adverse publicity circulated throughout said jurisdiction relative to the defendant and relative to his associates, an atmosphere of bias and prejudice so extreme that it is and will be impossible, on the date now set for trial, for the defendant to obtain and secure a fair and impartial trial.

This motion is based upon all of the files and records herein, including the affidavit of Charles S. Burdell at-

tached hereto and made a part hereof.

Charles S. Burdell, Attorney for Defendant.

[fol. 124]
Approart of Charles S. Burdell in Support of Motion State of Washington,
County of King, ss.:

Charles S. Burdell, being first duly sworn, on oath de-

poses and says:

That there is being filed herewith copies of illustrative newspaper articles relating to the defendant Dave Beck, and relating to other persons who are known or believed throughout the community to be associated with him. That these articles are a continuance of publicity of the nature and type which has been circulated about and concerning the defendants herein continually since March, 1957. That similar publicity has been circulated by means of telecasts and broadcasts. That affiant is advised and believes, and therefore avers, that articles of this type (of which the articles filed herein are illustrative only and not inclusive of all such publicity) has resulted in an attitude of extreme prejudice and hostility toward the defendant Dave Beck and the defendant Dave Beck, Jr. and that it will thereby be impossible for said defendants to secure a fair and impartial trial at the dates upon which the cases are now set for trial.

That publicity of the type referred to above has resulted from an investigation and hearing conducted by a United States Senate Committee; that representatives of said committee, including particularly Carmen Bolino and Robert Kennedy, conferred with representatives of the Prosecuting Attorney abortly prior to the commencement of the grand jury proceedings herein; and that representatives of the Prosecuting Attorney, including Victor Lawrence, [fol. 125] conferred in Washington, D. C. with representatives of the aforesaid Senate Committee.

That affant is also advised and believes, and therefore avers, that at least one representative of the Prosecuting Attorney, namely William Marx, conferred with representatives of the United States Internal Revenue Service at or during the course of the grand jury proceedings.

That the aforesaid hearings of the United States Senate Committee were discontinued or postponed at some time in or about the month of July, 1957; that said hearings were resumed in or about the month of October, 1957; that the resumption of said hearings, and the attendant publicity at a time so near the date now set for trial of these cases, which hearings are expected to continue to and during said trial dates, will result in continued and increased hostility and prejudice toward the defendants as averred above.

That on November 6, 1957, an order was entered denying a motion made by the defendant herein to set aside the indictment; that said motion was based upon the ground that irregularities occurred in connection with the impanelment, selection, drawing and swearing of the grand

jury, and upon the ground of misconduct of the grand jury and attorneys appearing before it. That affiant is advised and believes, and therefore avers, that said irregularities may have contributed to the hostility and prejudice against the defendants as aforesaid.

That affant is advised and believes, and therefore, avers, that there is no adequate remedy available by appeal with respect to the denial of the aforesaid motion to set aside [fol. 126] and dismiss the indictment; and affant believes, by reason of matters contained in the record herein that grounds for a Writ of Certiorari to the Supreme Court for review of the denial of said motion exist and affant desires, on behalf of the defendant herein, to make application for such Writ of Certiorari, but that there is not sufficient time, as required by Court rules, for making and hearing such application prior to November 12, 1957.

Charles S. Burdell

Subscribed and sworn to before me this 4th day of November, 1957.

Edwin J. Friedman, Notary Public in and for the State of Washington, residing at Seattle.

[fol. 127] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

No. 30967

[Title omitted]

ORDER DENTING CONTINUANCE-November 8, 1957

Defendant having made a motion for a continuance on the ground that an atmosphere of hostility and prejudice exists against him throughout the jurisdiction of this Court; and

Argument having been heard on the aforesaid motion,

It Is Hereby Ordered, Adjudged and Decreed that said motion shall be and it is hereby denied.

Done in Open Court this 8th day of November, 1957.

Malcolm Douglas, Judge.

Presented by: W. Wesselhoeft of Attorneys for Defendant.

[fol. 128] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

No. 30967

[Title omitted]

MOTION FOR CONTINUANCE—Filed November 26, 1957

Comes Now the defendant, David D. Beck, also known as Dave Beck, and moves for a continuance of the above entitled case on the following grounds:

- 1. That there continues to exist, as heretofore alleged, an attitude and atmosphere of hostility, within the jurisdiction of this Court, so extreme, that it is and will be impossible for said defendant to obtain a fair and impartial trial on December 2, 1957; that said attitude and atmosphere of hostility was engendered in part by the conduct of the office of the Prosecuting Attorney at the time of and in connection with the Grand Jury proceedings which resulted in the Indictment herein, and also in connection with the trial of the defendant Dave Beck, Jr., which trial commenced on November 12, 1957 and continued until November 23, 1957;
- 2. That publicity attendant upon and resulting from, and partially contributed to by the office of the Prosecuting Attorney, in connection with the trial of the defendant's son, Dave Beck, Jr., has emphasized, continued and increased the hostility and prejudice against the defendant [fol. 129] within the jurisdiction of this Court;

- 3. That certain of the newspaper, television and radio reports relative to the trial of the aforesaid case against Dave Beck, Jr. were false and misleading, and contributed to and emphasized an attitude and atmosphere of prejudice and hostility toward the defendant herein;
- 4. That proceedings in connection with the trial of defendant Dave Beck, Jr. were prominently displayed upon television and broadcast upon radio; and that the jury which was selected in the trial of the defendant Dave Beck. Jr. was subjected, without its consent, to television and newsreel photography; that approximately 60, and possibly more, jurors of the present panel of this Court were selected as prospective jurors in the case against the aforesaid Dave Beck, Jr.; that said prospective jurors were present in the court room during the impanelment of the jury in the case against said Dave Beck, Jr.; that said jurors were present during the course of interrogations, at which time prejudicial statements were made against the defendant herein, and during which time interrogations revealed that said defendant had been the subject of adverse, and hostile charges and attacks by a United States Senate Committee and by other persons and Governmental agencies; that during the course of the interrogation of the jurors in the case of the defendant Dave Beck, Jr., many members of the present jury panel were present, and heard and observed the aforesaid proceedings, even though said members of the panel were not selected and [fol. 130] called for service or prospective service in the case of the aforesaid Dave Beck, Jr.: that certain members of the present jury panel attended the trial of the aforesaid case against Dave Beck, Jr.:
- 5. That the trial of the aforesaid case against Dave Beck, Jr. involved much testimony which will be and constitute a part of the case against this defendant; that said testimony was reported prominently in newspapers in the city of Seattle, and that said newspaper reports came to the attention and were read by prospective jurors; that much of said testimony was false and misleading; that much of said testimony was prejudicial to the defendance.

dant herein and will prevent the defendant herein from obtaining a fair trial;

- 6. That the defendant herein is also a defendant in a case now pending in the United States District Court for the District of Columbia; that said defendant is named in said suit in his capacity as President of the International Brotherhood of Teamsters, an international labor union; that defendant is an indispensable party and also an indispensable witness in said case; that said case consists of an action in which certain members of the aforesaid International Brotherhood of Teamsters have attacked proceedings of the convention of said union in which one James Hoffa has been elected as President of said union; that said case has been set for trial in Washington, D. C. on December 2, 1957; that said trial date has been set by mandate of the United States Circuit Court of Appeals for the District of Columbia, and that said trial date cannot be changed or continued; that said case in-[fol. 131] volves 13 plaintiffs, purporting to act on and in behalf of all of the members of the said union, and involves many and numerous individual defendants and many and numerous witnesses; that the defendant is required and entitled to be present at said trial, and is expected by the plaintiffs to be present at said trial for examination in connection with the plaintiffs' case;
- 7. That by reason of the aforesaid case pending in the District of Columbia, defendant has been required to continue in his office as President of the aforesaid International Brotherhood of Teamsters; and that defendant has been required to spend considerable time in connection with said duties, which time he had expected to spend with his attorneys in preparation of his defense in the above entitled case;
- 8. That defendant also is now required to spend time with attorneys in Washington, D. C. in preparation for the trial of the aforesaid case in the United States District Court for the District of Columbia;
- 9. That at the time of filing of this motion, the defendant herein is in Washington, D. C. for such purposes;

that by reason of said case and other duties and obligations in connection with his said office and arising from numerous duties and obligations as a result of litigation throughout the country in which the defendant is a party or is affected, the defendant has not yet had sufficient time to consult with his attorneys and accountants in connection with the preparation of his defense herein;

[fol. 132] 10. That the attorneys for the defendant herein completed, on November 23, 1957, the defense of the trial against the defendant's son, Dave Beck, Jr., which case is related in law and upon the facts to the case herein; and said attorneys are not prepared, by virtue of the aforesaid duties, to defend the case against this defendant on December 2, 1957;

- 11. That the defendant is also named as a defendant in a complicated and involved case, involving alleged violation of Federal income tax laws, in the United States District Court for the Western District of Washington, Southern Division; that the attorneys for the defendant have been engaged in various motions and proceedings relating to and connected with that case;
- 12. That certain legal issues which will be involved in the case against the defendant were also involved in the aforesaid case against the defendant Dave Beck, Jr., and will be subject to appeal in said case;
- 13. That certain testimony which will be involved in or connected with the trial of the above entitled case was given in the case of the aforesaid Dave Beck, Jr.; that the transcript of said testimony is necessary to a fair trial of the defendant herein; that said transcript is in the process of being prepared, but has not yet been completed;
- 14. That certain of the testimony given by the defendant in the aforesaid case against Dave Beck, Jr. must have been disbelieved by the jury in said case, in view of the verdict therein; that said testimony was prominently displayed and reported in the newspapers throughout the [fol. 133] jurisdiction of this Court; that the verdict in said case against Dave Beck, Jr. was also prominently reported in the newspapers and upon television and radio, and it was made apparent by said reports throughout the

community that the verdict of the jury was and must have been based upon disbelief in the testimony of the defendant herein.

Charles S. Burdell, Attorney for Defendant.

[fol. 134] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY
No. 30967

[Title omitted]

ORDER DENYING DEFENDANT'S MOTION FOR CONTINUANCE
-November 29, 1957

This Matter having come on for hearing before the undersigned Judge of the above entitled Court on November 26, 1957 on defendant's motion for continuance; and the Court being fully advised in the premises, now, therefore,

It Is Hereby Ordered that defendant's motion for continuance be and the same is hereby denied in all respects and on all grounds.

An exception is hereby allowed to the defendant.

Done in Open Court this 29th day of November, 1957.

Malcolm Douglas, Judge.

Presented by: John J. Keough of Attorneys for Defendant.

[fol. 257] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY
Number 30967

STATE OF WASHINGTON, Plaintiff,

V.

DAVID D. BECK, also known as DAVE BECK, Defendant.

VERDICT-Filed December 14, 1957

We, the jury in the above-entitled cause, do find the defendant Guilty of the crime of Grand Larceny as accused in the indictment herein.

Charles Hickling, Foreman.

[fol. 264] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY
No. 30967

THE STATE OF WASHINGTON, Plaintiff,

DAVID D. BECK, a/k/a DAVE BECK, Defendant.

JUDGMENT AND SENTENCE-February 20, 1958

The Prosecuting Attorney with the Defendant David D. Beck, a/k/a Dave Beck, and counsel Charles S. Burdell and John J. Keough came into Court. The Defendant was duly

informed by the Court of the nature of the indictment made against him for the crime of

Grand Larceny

committed on or about the 3rd day of February, 1956, of his arraignment and plea of "Not guilty of the offense charged in the indictment", of his trial and the verdict of the jury on the 14th day of December, 1957, "guilty of the offense charged in the indictment".

. The Defendant was then asked if he had any legal cause to show why judgment should not be pronounced against

him, to which he replied he had none.

And no sufficient cause being shown or appearing to the Court, the Court renders its judgment: That whereas the said Defendant having been duly convicted after trial and verdict of a jury on December 14, 1957, in this Court of the crime of Grand Larceny it is therefore

Ordered, Adjudged and Decreed that the said Defendant is guilty of the crime of Grand Larceny and that he be punished by confinement at hard labor in the Penitentiary of the State of Washington for a maximum term of not more than Fifteen Years, and a minimum term to be [fol. 265] fixed by the Board of Prison, Terms and Paroles.

The Defendant is hereby remanded to the custody of the Sheriff of said County to be by him detained and delivered into the custody of the proper officers for transportation to said Penitentiary.

Done in open Court this 20th day of February, 1958.

George H. Revelle, Judge.

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

KING COUNTY

No. 30967

[Title omitted]

REQUEST FOR MAILING NOTICE OF APPEAL AND CERTIFICATE OF COMPLIANCE—Filed February 25, 1958

To Norman R. Riddell, Clerk:

Pursuant to Rules 33 and/or 46 of the Supreme Court Rules on Appeal, I direct that you mail copies of the Notice of Appeal that I have filed this day, to the following parties of interest:

Charles O. Carroll Attorney for State Address: 602 County-City Building

John J. Keough, Attorney for Deft.

I, Norman R. Riddell, County Clerk, do hereby certify that I have this day, mailed the above mentioned copies of the Notice of Appeal to the parties above directed.

Dated this 25th day of February 1958

Norman R. Riddell, County Clerk, By [Illegible], Deputy.

[fol. 270] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 1]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

No. 30967

STATE OF WASHINGTON, Plaintiff,

VS.

DAVID D. BECK, a/k/a DAVE BECK, Defendant.

Statement of Facts

Be It Remembered, that on the 2nd day of December, 1957, at the hour of 9:30 o'clock A.M., the above-entitled and numbered cause came on for trial before the Honorable George H. Revelle, one of the Judges of the above-entitled court, sitting in Department No. 17 thereof, at the King County Court House in the City of Seattle, County of King and State of Washington;

APPEARANCES

Charles O. Carroll, Prosecuting Attorney, by Laurence Regal and Charles Z. Smith, Assistant Prosecuting Attorneys, appearing for and on behalf of the State;

Charles S. Burdell and John Keough, Attorneys, appearing for and on behalf of the Defendant;

Whereupon, the following proceedings were had and done, to-wit:

[fol. 2] (The following proceedings were had in chambers:)

The Court: Having been previously informed by you gentlemen that there were some motions to be made by the defendant prior to the impanelling of the jury, since the courtroom contains the jury it is more convenient to have motions heard here in chambers rather than excuse the jurors. I have asked you to come in at this time to

present the motions that they may be properly presented now.

CHALLENGE TO PANEL

Mr. Burdell: Yes. First I would like to present a challenge to the panel. This challenge is in writing and attached to it is an affidavit prepared by me.

The Court: I have read the challenge and the affidavit. Mr. Burdell: Very well. Paragraph 1 of the challenge refers to the green booklet which has been submitted to some or all of the jurors and which contains information which I believe to be prejudicial and which, I guess I can just refer to the same points in the previous case which Your Honor heard, but I probably should say for the record that I am referring particularly to page 8, the paragraph which is headed "Selection of a Jury" which refers to the fact that there is no reflection upon a juror who is peremptorily challenged, but doesn't make any similar reference to a similar dismissal for cause, and then the next paragraph which relates to successive steps of trial.

I believe there is an indication there that a defendant is [fol. 3] required to put on evidence and then under the same paragraph which indicates in No. 6, this is on page 9, No. 6 at the top of page 9 says that the last step is deliberation

by the jury and return of verdict.

That particular statement combined with the statement in the first question under the heading "Deliberation of Jury" on page 9 and the statement in the answer to the second question under the heading "Deliberation of Jury" is according to my contention, improper. That is, the method indicated for their deliberations is improper and prejudicial, and in the second answer under the same heading, "In a criminal action, all twelve members of the jury must agree upon the verdict," because it negates the possibility that jurors may not agree and in effect instructs them that they must agree.

Those are the particular portions of the booklet that I feel are prejudicial, and then in the challenge to the panel, Paragraph No. 2 relates to prejudice throughout the juris-

diction of the court. In support of that paragraph I have reference to not only the affidavit which I have filed in support of the document entitled "Challenge to the Panel" but also to the affidavits and exhibits which have been filed in support of various motions which have been made in the case, including particularly motions for continuance, referring particularly to newspaper articles which have appeared throughout this term of service of this jury including the newspaper articles which appeared in the [fol. 4] course of trial of the case of State of Washington vs. Dave Beck, Jr.

Paragraph 3 refers to the fact that members of the panel were present during the course of the interrogation of the prospective jurors in the case of State vs. Dave Beck, Jr., during the course of which there were interrogations relating to the defendant and which indicated that there had been throughout the community discussions of a

hostile nature toward the defendant.

Paragraph 4, which I have already referred to, refers to newspaper reports, television and broadcast reports which were circulated in the course of the trial of State of Washington vs. Dave Beck, Jr. which included reports which were adverse to the defendant.

Paragraph 5 relates to the fact that certain members of the panel who were selected and who may be present at this time for voir dire examination as prospective jurors were also prospective jurors in the case of State of Washington vs. Dave Beck, Jr. and were challenged

peremptorily by the defendant.

Paragraph 6 states that jurors who attended the interrogations in the State vs. Dave Beck, Jr. trial have been permitted to communicate freely among themselves in the course of their jury service during the past several weeks, during that trial, that is State vs. Dave Beck, Jr., and thereafter, and I believe all of those conditions are supported by the affidavit.

Now in addition to that challenge, may I go out and get

my notebook for just a second?

[fol. 5] The Court: Yes, sir.

MOTION FOR CONTINUANCE

Mr. Burdell: I want to, in addition to the challenge to the panel, I renew the motion for continuance which I made on November 26, 1957, at which time I pointed out that an action was pending in the United States District Court for the District of Columbia which action was commenced by thirteen members of the International Brotherhood of Teamsters against the International Brotherhood of Teamsters and against the defendant herein who is the president of the International Brotherhood of Teamsters, and in that action it is sought to restrain the president-elect of the International Brotherhood of Teamsters, James Hoffa. from taking office. The preliminary restraining order has been granted in that case as a result of which the defendant. Dave Beck, continues in his position as president of the International Brotherhood of Teamsters and he is a necessary witness in the case in Washington, D. C. and is a party in the case in Washington, D. C. and as a matter of fact, or as a matter of opinion by me, entitled to be present in the course of this trial, that is in the course of the trial in Washington, D. C.

I might say that that trial also contains or includes a request on behalf of the plaintiff to appoint a trustee to conduct the affairs of the International Brotherhood of Teamsters and, of course, the defendant, being president of the union, should be and is required or has been requested by attorneys in Washington to be present at that case and I am advised that he is expected to be present not only by [fol. 6] his own attorney but by attorneys for the plaintiffs. He will be a material witness and his inability to be there will deny him and the International Brotherhood of Teamsters the right to submit material evidence, in addition to which the action in this case, it is believed by me and by attorneys in Washington, D. C., may affect the outcome of the action in Washington, D. C., particularly with respect

to the appointment of the trustee.

It is the opinion of Edward Bennett Williams, who is principal counsel for the International Brotherhood of Teamsters in Washington, D. C., which opinion has been communicated to me, that in the event there is a conviction

in the present case, such conviction would affect the action in Washington, D. C., particularly insofar as the appointment of a trustee is concerned and that such a conviction might affect that action regardless of the defendant's right of appeal in the case, in the present case, and regardless of what merit might be included in the defendant's right of appeal.

As a result of these things, it is my contention that this case should be continued long enough to permit the defendant to attend the proceedings in Washington, D.C., which I might say has been set according to my information by mandate of the Circuit Court of Appeals and which action affects the entire membership of the International Brotherhood of Teamsters. I might say also that commencing today, the American Federation of Labor-C I O, are commencing proceedings in Atlantic City to determine whether or not [fol. 7] the International Brotherhood of Teamsters should be expelled from the AFL-CIO and that is something which affects the entire membership and for the benefit of the entire membership the defendant in this case should attend said proceedings. It is a matter which affects not the defendant personally necessarily but each and every member of this union, which contains over a million members.

Neither the case in Washington, D. C. nor the AFL-CIO convention were set on this date as a result of any knowledge or action or acquiescence on the part of the defendant or defendant's counsel. I might say that at least the case in Washington, D. C. was scheduled after the present case was set for trial on December 2 but an attempt was made by me and by Mr. Williams in Washington, D. C. to have that case set at a date which would not conflict with the present case so that the defendant could be present and represent the union and testify on behalf of the union on behalf of himself and also at the request of the plaintiffs, but by virtue of facts over which we had no control here and over which counsel in Washington, D. C. had no control, the case was not set at a time which would permit the defendant to be present on December 2, 1957.

We think that the defendant personally has a personal interest in the case in Washington, D. C. and we think that due process in the administration of law in Federal courts

permits and demands his presence in Washington, D. C. and while we understand, of course, that the case here is also a case which has been set, we feel that the involvement [fol. 8] of so many persons and so many important issues in the case in Washington, D. C. renders or creates a situation where the discretion of the Court should be exercised to permit the defendant to attend these proceedings in Washington, D. C.

ALTERNATIVE MOTION FOR CONTINUANCE

Now I have a third motion which is in the event my challenge and my motion for continuance are denied, that I be given a continuation of one day in order to apply to the United States District Court for an injunction restraining the proceedings in this court for such a period of time as will permit the defendant to attend the proceedings and

testify at the proceedings in Washington, D. C.

I may say in that connection the motion which I made for continuance on November 26 was argued on November 26, I believe, and an order was entered on November 28th or November 29th and if it is suggested that I could have applied to the Federal United States District Court before today, my answer would be that the first it was practical to do so before today, which is the motion day, and in addition in view of the different courts' denial of the continuance, I expected that the case in Washington, D. C. would probably be continued because of the fact that both parties desired the presence of the defendant as a witness. However, I am advised by telephone this morning that since so many parties are involved in that case it has been impossible to arrange for a continuance.

Now can we go off the record for a moment?

The Court: Yes. Off the record.

[fol. 9] (Discussion off the record.)

Mr. Burdell: On behalf of the defendant, I will agree and stipulate that this matter is being heard in chambers not only for the convenience of the defendant but in order to lessen the possibility of prospective jurors overhearing or reading in newspapers about these particular proceedings.

Now I also want to renew the motion for continuance on the grounds which I asserted in the motion of November 26, namely that there still exists bias and prejudice against the defendant of such a nature which require a substantial and considerable continuance. I also believe that in view of the adverse publicity toward the defendant which I believe to have been circulated in newspapers, radio and television during the course of the trial of Dave Beck, Jr., I feel that this case should be continued at least until we have a new jury panel which would be January 6, 1958.

Now can I be sworn and then make a statement to the effect that the statements which I have made concerning the Washington case are—well, I would like to state on

what information they are based under oath.

The Court: Any objection?
Mr. Begal: None at all.

CHARLES S. BURDELL, having been duly sworn by the Court, deposed and stated as follows:

Mr. Burdell: With reference to the statements which I have just made concerning the proceedings in Washington, D. C., I want to state that that information comes to me by [fol. 10] telephone from Edward Bennett Williams who is the attorney for the defendant and for the International Brotherhood of Teamsters in the proceedings which I re-

ferred to in Washington, D. C.

I have talked to Mr. Williams several times about the matter and I believe that the information which he has given me about the case there which I have related here is true. I personally consulted with Mr. Williams in an effort to arrange the trial of the case in Washington, D. C. at a date which would not conflict with the trial of the present case and I might add that I personally telephoned Washington this morning and talked with the office of the International Brotherhood of Teamsters in order to be sure that the trial in that case was going on this morning and I am advised that it has started there and that just by way of summarization all of the reports which I have made concerning the case in Washington, D. C. are true to the best of my knowledge and belief.

The Court: Does the prosecution have any questions to

ask of Mr. Burdell?

Mr. Regal: There is only one question, Your Honor. Mr. Burdell stated, Your Honor, that Mr. Edward Bennett Williams was Mr. Beck's attorney. He did not mean he was Mr. Beck's attorney for this case. He is not connected in this cause in any way. Mr. Burdell is the attorney in this cause.

Mr. Burdell: That is correct. I am the attorney in this cause. I should say this, however. I am the attorney in this cause, and Mr. Williams is not connected with this case [fol. 11] although I should say that I too was expected in Washington, D. C. in connection with the trial of the case there, not as a participant but as a consultant and possibly as a witness.

Mr. Regal: Judge, are we going to keep the jury together at this time? We would like to have that done and I think

Mr. Burdell would too.

Mr. Burdell: Yes, I would.

Mr. Regal: And also have an alternate juror.

The Court: I might say I would do so whether you gentlemen wanted to or not.

Will one of you gentlemen call the Clerk in?

(The Clerk was called into chambers.)

The Court: Can you tell me from the records officially available to you in this cause and in the cause of State vs. Dave Beck, Jr., No. 30966, whether or not any members of the jury panel sent here by the Presiding Judge this morning, and I am informed there were thirty, include any persons which were sent here on the jury panel in the case of State vs. Dave Beck, Jr., in the forty sent that day? Are you able to do that?

The Clerk: No, I am sorry. I don't keep the record. The first time when the box is filled, I don't take the names. There are some jurors out there that I have seen before.

The Court: You don't know whether it is in this case,

however?

The Clerk: I know that some of them are jurors that were in the case we just had.

The Court: Do you have any records available to you [fol. 12] presently in the courtroom in the nature of determining as to whether or not the thirty people now here in the courtroom were present on the opening day of the jury impanelling in the Dave Beck, Jr. case?

The Clerk: I haven't a thing I could tell by.

Mr. Burdell: May I make a motion in that connection? I would like to move that all jurors who were included among the forty who were sent down as prospective jurors in the case of State vs. Dave Beck, Jr. be excused as prospective jurors in this case, and in that connection I would have no objection to the Court's making that determination in the manner usually followed by the Court, that is by having them raise their hands.

Then I also move that all jurors who—that is if my first motion is denied—that all jurors who were excused either for cause or peremptorily by either side be excused as prospective jurors in the present case, and again in that respect I would have no objection to the Court making that determination in the usual manner followed by the

Court.

The Court: That is all. Thank you.

(The Clerk was excused.)

The Court: I would like to ask the prosecution to speak on whether or not they have anything to say with reference to the motion for continuance of one day in order to file

with the District Court an injunction?

Mr. Begal: Well, Your Honor, I don't know of any legal authority and Counsel hasn't stated any which would justify such an act. I assume that he feels that there is something [fol. 13] he can go up to the Federal Court under. Counsel I am sure would admit that he has many members or a number of members in his firm who could file the necessary papers. He could prepare the papers this evening. We certainly won't have a jury impanelled by 4:00 o'clock and he could prepare the documents and have them filed by one of his members of his firm tomorrow and I wouldn't object to a two or three hour recess so he could argue the matter and we certainly would be willing to go up and argue the matter. I assume we would argue on some basis as stated

here. I don't know what the basis would be but I assume it would be one or more of the matters he has just referred to in his motions before this Court and of course we resist it.

It is a great inconvenience to excuse the jury panel. I don't know whether he intends to do it today, but if the Court were to recess until tomorrow and have this panel come back tomorrow morning, whether Counsel is proposing to do it today or recess all day tomorrow, but I would not object to a two or three hour recess to argue the matter. I am sure that could be arranged. However, I don't see any basis for it.

The Court: Any response to Mr. Regal?

Mr. Burdell: No, I have no response except to say that I believe that an orderly procedure would be to dispose of that first rather than approach the Federal Court under a situation where some of the jurors had already been selected and particularly in view of the fact that insofar as I understand our procedure, the jurors or the prospective [fol. 14] jurors who have been selected and have been impanelled will be free to read the newspapers at this particular period of time. I believe the matter should be disposed of for that reason primarily.

Mr. Regal: Your Honor, could I address a question to

Mr. Burdell?

The Court: Yes.

Mr. Regal: I would want to point out that today is motion day in Federal Court. Whether or not he could have any one of the judges hear this matter tomorrow, I don't know, but it is a matter about which I have some doubt. I do believe he could have one of the courts hear it this afternoon.

The Court: Is there anything further from either side on these matters?

Mr. Regal: Your Honor, it just seems to me that a motion could very easily have been filed to be heard today by the Federal Court sometime last week. I think this is a little bit late and as I said before, I know of no legal basis for it.

DENIAL OF CHALLENGE TO PANEL AND MOTIONS FOR CONTINUANCE

The Court: With respect to the challenge to the panel made by the defendant, the Court has read the file insofar as it pertains to the panel. He is familiar with the book referred to by the defendant's attorney. The challenge to

the panel is not well taken and is denied.

In that connection, however, the motion made by the defendant that all jurors included among the forty in the State vs. Dave Beck, Jr. case may be excused when so [fol. 15] discovered by the Court in open court by questioning and will be excused at that time for this cause, leaving a panel without any jurors being called therefrom who have been involved in any way in the previous action against

another defendant by the same name.

I do see some possible difficulty developing in case the panel present in the courtroom is exhausted and I assume that there are two ways that that matter might be handled. One would be to have that question asked by the Presiding Judge before sending additional members of the panel to this department, or ask the same question in this department. The Court prefers the latter procedure because all matters concerning this case should now occur in this department for the record. Do you gentlemen concur?

Mr. Burdell: I concur.

Mr. Regal: The State concurs.

The Court: The motion for continuance made on the grounds previously made and filed by the Presiding Judge and the additional grounds presented here this morning by Mr. Burdell with respect to another action in Washington, D. C., will be denied. However, the Court will, upon application of the defendant and examination of the proper processes and argument, if necessary, permit the defendant to be available for such out-of-court proceedings which may be proper procedures of court which both Federal and State permit, which would involve the least amount of clash between the two jurisdictions involved.

With reference to the motion for continuance of one day [fol. 16] in order to apply to the District Court, the Court feels at this time that the opportunity to take such emergency action was presented last Friday, November 29. Such

action was only impractical as stated by the defendant in a sense that there are adjournment times and the availability of courts, but under the circumstances such as this where emergencies exist, the conducting of court is on a 24-hour basis. There is no showing it was impossible. I feel that that will have to be the conclusion.

However, I will, if proceedings are filed in due course, I feel that the defendant can file them and that if it requires some time of this present counsel to be present for the purpose of argument in another jurisdiction within the geographical limits of the United States and Washington, I would grant such reasonable time for argument, two or three hours, or whatever period of time is necessary, this being because I think it is part of due process for attorneys to be able to pursue all reasonable opportunities to defend their clients.

That disposes of the motions, gentlemen. Now I would like to ask you some questions.

COLLOQUY BETWEEN COURT AND COUNSEL

The first question is, I have examined the file and it is somewhat difficult to be sure, and rightly so, and I want to ask you if I am right before I make any public statement that the witnesses endorsed on the indictment by the State are presently before me on the indictment and I find in the file several witnesses listed. E. E. Hepper, P. G. Harring-[fol. 17] ton, J. J. David, Roger Jones, William F. Devin. My question is, are there additional witnesses to be so designated?

Mr. Regal: Your Honor started at the back. Mr. Devin is an additional witness. Mr. Hepper will be an additional witness. Mr. Harrington will not be. He may be scratched out and Mr. David or Mr. Jones, whichever one is available, will be a witness. On this list of witnesses for the State, there are some that we will not call. We will not call Mr.

so far as we know.

The Court: That is all right.

Mr. Regal: There are some we will not call, three or four or five.

Mr. Burdell: May I say something about that?

The Court: Please.

Mr. Burdell: The only one of those witnesses mentioned by Mr. Regal that I have any objection to as far as endorsement is concerned is Mr. William F. Devin. I object to endorsement or testimony by this witness if he is going to testify concerning proceedings in the Grand Jury because in accordance with our statutes and rulings which have been made in response to my application for Grand Jury proceedings, they all have been to the effect that Grand Jury proceedings are secret and if Mr. Devin is going to testify with regard to Grand Jury proceedings I object now and will object at the time of his testimony unless—well, I won't say unless. I will object to it and I want to advise the Court at this time that if he is permitted to testify [fol. 18] concerning Grand Jury proceedings, I will of course at that time make further application for delivery to me of all the Grand Jury proceedings, certainly all those submitted by Mr. Devin.

The Court: The Court has noted your remarks and at the proper time, of course, you will be permitted to make motions or objections which you may have. At the present time we will consider only whether Mr. Devin should be

endorsed as a witness.

Mr. Regal: I do not think we have asked for an endorsement. At this time we will ask to endorse Mr. William F. Devin as a witness. Counsel has already objected to that.

Mr. Burdell: We can just incorporate my earlier state-

ment.

The Court: It will be so considered. I would assume from the files he had been so endorsed.

Another question which may save considerable time in a sense, unless you have already met in your finds and have a plan, I question first whether any exhibits used in the previous case are going to be used in this one?

Mr. Regal: Yes, there will be. I have talked to the Clerk regarding them and they will make them available. They have the problem and they will work it out, unless

an order is necessary.

The Court: What I am wondering is, that being the fact, if there is any matter of mechanics that can be worked out previous to the use of those documents with the Clerk, such procedures as would save us time in open court.

[fol. 19] Mr. Regal: I talked to Art Stewart and they seem to have the matter under control. I told them what I wanted. I want the Western Conference books, four books. I think they were Exhibits 20, 21, 22 and 23, and then I wanted the envelope that was Exhibit 33, and the other envelope, Exhibit 34, and I think the piece of paper, Exhibit 35. It is the piece of paper with the writing on it.

The Court: What mechanical way will you handle that? Normally the Clerk would resist the removal of any exhibit.

Mr. Regal: Yes. What they probably will do is make a notation in the records in the other case that the books have been withdrawn and taken to this cause because it would be a monumental task to photostat those books. What they will do with the others, they will photostat and insert the photostats, and Mr. Smith who is here assisting us will take care of the mechanics outside of court, and if we have to have an order to do so, but Art Stewart didn't indicate we would have to have an order, just merely a request from the Clerk at this trial.

The Court: Then mechanically all the books have tags that could be removed.

Mr. Begal: I suggest that they be covered.
Mr. Burdell: Some of them have stamps, too.

The Court: That is the second question. The tag can be removed, but what do you think we should do with respect to that?

[fol. 20] Mr. Keough: If these numbers are just covered, these things will go to the jury room and the jury could uncover the thing too.

Mr. Regal: Of course, the exhibit itself can't be tampered with. I think it should be covered or left just the way it is.

Mr. Burdell: How are we going to make the originals a part of the records in each case, and I think the originals all have to be a part of the record in each case.

The Court: That part we can handle.

Mr. Regal: That has been done before I am sure.

Mr. Burdell: Is this something, Your Honor, that Mr. Regal and I can give some further consideration to?

The Court: That is why I brought it up. I thought it might be important to one or the other of you. What I would appreciate—actually it is immaterial to the Court,

except I would like to avoid any extended discussion and

due surprise at the time it comes up.

Mr. Burdell: I can say that the fact that Counsel wants to introduce those particular exhibits which he has referred to, whether he has referred to them by correct number or not, but I do recognize what he is talking about and the fact that he wants to use them comes as no surprise.

Mr. Regal: There may be others too.

Mr. Burdell: Well, I have seen them all and I don't think there will be any problem about surprise.

The Court: I would appreciate if you gentlemen would

[fol. 21] work out the mechanics, both of you.

Mr. Regal: I will work the mechanics out with the Clerk and notify Mr. Burdell. The only problem as I see it is the stamp or the identification in the other case on the exhibit.

The Court: Yes.

Mr. Regal: That didn't occur to me at the time the others were introduced. Otherwise I would have had a tag put on them.

The Court: I am not necessarily saying it is a problem. Mr. Regal: It is something to consider in argument.

Are you going to argue about that, Mr. Burdell?

The Court: I suggest you fix it up the way you propose and check with Mr. Burdell and if you don't agree, then we will have what you don't agree on to decide.

Mr. Regal: Some of these exhibits will not necessarily come in. It will depend a good deal on what witnesses the

defense calls.

The Court: I understand that. This is merely anticipating. We don't want to keep the jury all tied up while we

are discussing such chamber matters.

I perhaps don't need to say this, gentlemen, but I would like to say that I intend to conduct the proceedings of impaneling the jury with great care. I would adopt the same procedure we used in the previous case you tried in this department insofar as it pertains to the asking of general questions by the Court and general questions by each side, specific inquiries by counsel.

[fol. 22] Mr. Burdell: I have no objection to that.

The Court: Are there any other matters, gentlemen?

Mr. Burdell: I have one request in connection with the impaneling of jurors. I am assuming that prior to the completion of the impanelment the prospective jurors will be permitted to recess and leave the courtroom and confer among themselves and will not be isolated as they will be after the jurors are finally impaneled, and I would like to request that the Court advise the jurors, that is, all of the prospective jurors, that they are not to discuss the case among themselves, not to read newspaper articles, not to listen to television reports or radio reports, not to discuss the matter with anyone during the period of their impanelment, not to receive any information connected with the case from any source or discuss the case with anyone during the course of the impaneling.

Mr. Regal: Your Honor, I intend on my voir dire to go into just the personal aspects of a person's background because I expect Mr. Burdell to go into the other aspects as he did before. That will save the time of the Court and all of us. I would like the privilege, however, if he gets an answer that looks like it needs expanding and he is happy with it and I am not, to develop a few more questions.

The Court : It is always available to both sides.

Mr. Regal: Yes. I wanted to be sure I wasn't foreclosing

myself by being too brief.

[fol. 23] The Court: I think on your recent request, Mr. Burdell, it is actually an impossibility until the Court has absolute control over the panel to confine them and to give the jurors an instruction that I would give them, of course, once selected. I think the defendant and the State must rely on the inquiries of the Court and themselves to eliminate from the jury any possible reading or expression from such forms as you mention, reading newspaper articles and television. We have to consider that at the time of the selection of the jury, when it is over, it is perfectly proper to go back and inquire of the jurors seated or presently seated, and otherwise I am afraid the assumption that they did not inadvertently violate such an instruction would be wrong to take and might lead to error.

Mr. Burdell: Of course, my problem and my concern is that perhaps some of them whom we have passed or interrogated may wind up in some discussion after we have interrogated them and after we have passed them which could easily happen overnight. As a matter of fact, I would be surprised if some of them didn't mention to someone that they were prospective jurors. I don't think it is practical to go back and ask each one of them. Perhaps if the Court tomorrow morning or during recess would ask them in a general way, ask the entire group if they had had any discussions overnight or anything of that sort.

The Court: I will do that and I will permit you to ask

the same kind of general question.

Mr. Regal: Just to make sure I heard what you said [fol. 24] before, that is what you said?

The Court: That is what I meant.

Mr. Begal: I want to be sure I am tuned in today.

The Court: Anything else, gentlemen !

Mr. Burdell: Not by me.

Mr. Regal: Could we have a recess now?

The Court: Yes, we will have a recess until 11:15.

[fol. 25] The Court: Are the parties ready in the case

of State of Washington vs. David D. Beck! Mr. Regal: The state is ready, your Honor.

Mr. Burdell: Defendant is ready, Your Honor.

COURT'S INTERROGATION OF PROSPECTIVE JURORS

The Court: May I ask that all of the jurors on the panel in the courtroom please stand? I will ask the gentleman at the end—is there room for you in the second row? I will ask that gentleman who is not a juror to please remove himself. I see a juror in the third and fourth rows. Would you move up to the third row, please. Is there room for you to sit there, sir? Thank you, ladies and gentlemen. Please, be seated.

I would like to ask the members of the jury panel if any juror who is on this panel who was present in this courtroom on the trial held in this courtroom of the case entitled State v. Dave Beck, Jr. If so, please stand.

A Voice: I was present up to the time the jury was

selected.

The Court: At any time, I mean. May I have your name, sir, on the end?

A Voice: Kreager. I was one of the four that wasn't

The Court: Just your name, please. The second gentle-

A Voice: Morrison.

The Court: The gentleman in the third row?

A Voice: Brown.

The Court: And the lady in the rear row?

A Voice: Marshall.

[fol. 26] The Court: Mrs. Marshall, you may be seated. You are not now a juror. The gentleman in the—

A Voice: Levy is my name.

The Court: Please be seated. Perhaps I should have your first name, Mr. Brown.

Mr. Brown: Warren. The Court: Thank you.

Alvin L. Kreager, is that right? Mr. Kreager: That's right, sir.

The Court: All right, Mr. Kreager, Mr. Levy, Mr. Morrison and Mr. Brown will please now report back to the department of the Presiding Judge. Madam Clerk, you will please call the jury.

(The following jurors were called by the Clerk:

William A. Woodrow, 7133 28th Avenue Southwest.

Marvin Cook, 6851 52nd Northeast.

Frederick F. J. Ryan, 4131 West Southern.

Raymond J. Kraatz, 4134 West Monroe Street.

Helen R. Brown, 204 West 130th.

Mary A. Cochrane, 9825 Northeast 19th Street, Bellevue.

Fred T. Wood, 2360 East 125th. Sam Bosna, 4414 East 77th Street. Carl E. Lutes, 1815 South 133rd.

R. H. Westenberg, 316 West Comstock Street.

Dixon Vallance, 3233 56th Southwest.

Paul F. Lange, 14833 Juanita Woodinville Way Northeast, Kirkland.)

The Court: Will all of the jurors in the room please rise, raise your right hands to be sworn.

[fol. 27] The Clerk: You and each of you do solemnly swear that you will true answer make to such questions as may be asked you by or under the direction of the Court touching upon your qualifications to serve as jurors in this cause, so help you God?

The Panel: I do.

The Court: Please be seated. The remarks that the Court presently makes and the questions I may ask or may be posed are addressed to the jurors in the box as well as the jurors in the first three rows of the courtroom. This case is entitled State of Washington vs. David D. Beck, also known as Dave Beck, defendant. It begins with an indictment reading as follows:

"David D. Beck, also known as Dave Beck, is accused by the Grand Jury of the County of King, State of Washington, by this indictment, of the crime of Grand Larceny, committed as follows:

"He, the said David D. Beck, also known as Dave Beck, in the County of King, State of Washington, on or about the 3rd day of February, 1956, then and there having in his possession, custody or control as agent, bailee, employee, servant, officer or trustee, certain personal property, to-wit: the sum of \$1900.00 lawful money of the United States, the property of the Western Conference of Teamsters, an unincorporated association organized as a labor union, the said \$1900.00 being derived from the sale to one Martin B. Duffy on or about the thirtieth day of January, 1956, of one 1952 Cadillac automobile, motor number 526004746, the property of said Western Con-[fol. 28] ference of Teamsters, the said David D. Beck, also known as Dave Beck, in the County of King, State of Washington, on or about the third day of February, 1956, then and there did wilfully, unlawfully and feloniously secrete, withhold or appropriate the said \$1900.00 to his own use with intent to deprive and defraud the owner thereof:

"Contrary to the statute in such case made and provided, and against the peace and dignity of the State of Washington."

The State of Washington is here represented by the Prosecuting Attorney, Mr. Charles Carroll. Will you stand, Mr. Carroll?—The Deputy Prosecuting Attorney

Mr. Laurence D. Regal, and Deputy Prosecuting Attorney Mr. Charles Smith.

The defendant, Mr. David D. Beck; Mr. Beck, will you please stand? Thank you. He is represented by Mr. Charles Burdell. Mr. Burdell? And assisted by Mr. John

Keough. Thank you,

The witnesses endorsed for the State are M. J. Devine, Frank E. Dutton, N. B. Lake, Martin B. Duffy, Donald D. McDonald, Ken Eline, David L. Forrest, Alfred Roger Hill, Charles B. Leaf, Carl E. Huston, Ludwig Loeb, Samuel B. Bassett, Frank W. Brewster, Marcella M. Guiry, William H. Martin, Russell Schley, Louise Sartor, E. E. Hepper, J. J. David, Roger Jones and William F. Devin.

Ladies and gentlemen of the jury, I would like to have you answer at this moment this question: How many of you are new on the jury panel this morning? I see no hands. That question was addressed to the jurors in the [fol. 29] courtroom as well as in the box, and I see it was so understood. How many of you have tried a civil case all the way through to conclusion? Will you please hold your hands a moment? That is one, two, four, five, six, seven, eight, nine, ten, and twelve. Thank you.

Now these questions I will address to the members in the box. I wish, however, the jurors in the courtroom to pay close attention to my remarks and all the remarks made in the courtroom even though you are not in the box. How many jurors have during their term tried a criminal case clear to conclusion? No. 1, 3, and 11. Thank you. If I am going too fast, gentlemen, please stop me

so that you may record these.

How many have tried or been a juror of a criminal case which did not go to conclusion?

A Voice: We barely got started and the case was continued.

The Court: No. 4, thank you. At the present moment, as you know, having served on cases before, we are involved in the process of the selection of jurors to try this cause. In that process the Court asks you questions of a general nature in such a fashion that you may raise your hand in answer and then permit each counsel to ask in

behalf of their client questions of a general nature and then subsequent to that permit counsel to ask questions specifically of each of you. The purpose of this proceeding is to be sure that the jury selected to try the cause is [fol. 30] qualified to sit in this particular case. I would also like to point out to you before posing the question, for the sake of emphasis, that the trial of a criminal case such as this and any criminal case is different from that of a civil case in two very important respects. In a civil case, a plaintiff must prove his case by a preponderance of the evidence which merely means a greater weight of the evidence, while in a criminal case the State must prove its case beyond a reasonable doubt, which is a far greater degree of proof. The second main difference between civil and criminal cases is that in a civil case ten may agree upon a verdict whereas in a criminal case all twelve must agree. It is presumed in a criminal and civil case, both, that when a jury has been selected and accepted by each side the jurors will keep their minds open until the case is finally submitted to them and accept the instructions of the Court as the law and base their decision upon the law and the facts uninfluenced by any other consideration.

Now the purpose of the questions and the examinations of the panel is to determine whether or not the jurors have that frame of mind. Now I would like to ask the members of the jury who are presently sitting in the box some questions but I ask that all others in the courtroom please pay attention to the questions as posed. The first question is, have any of you heard of this particular case before! If so, please raise your hand. No. 1, 4, 5, 6, 7, 8, 9, 10, 11, 12.

Are any of you jurors in the box members directly or [fol. 31] indirectly of a union organization called the Western Conference of Teamsters? If so, please raise your hand. No. 5. You have a questioning look on your face. Do you have a question?

Juror No. 5: My husband. That of course doesn't involve me.

The Court: The question was "you". So you would not raise your hand. Now, have any of you any close relative, friend, or associate in any capacity who is directly or indirectly connected with the Western Conference of Team-

sters? Please raise your hands. No. 5. Raise it up a little higher. The gentlemen here must record these answers. That is No. 5. Are there any members of the jury panel who are members of the Teamsters Union or union affiliated with that union? Please raise your hands. That is you, yourself, now. Are there any members of the jury panel in the box who are related to, associated with, in any fashion whatsoever, that they now presently know of, any Teamsters Union; if so, please raise your hand? No. 5. Thank you.

Do any of the jurors in the jury box know the defendant,

Mr. David Beck, personally? Please raise your hand.

Now is there anyone on the jury in the jury box who has any information regarding the offense here charged? I see no hands.

Now, ladies and gentlemen, is there anyone on the jury who has talked with anyone who claimed to have any firsthand information regarding the offense here charged? [fol. 32] Please raise your hand. I see no hands.

Has anyone ever expressed to any of you an opinion as to the guilt or innocure of the defendant? Please raise

your hand. No. 6-

Juror No. 1: Your Honor, you say anyone, is that-

The Court: Anyone.

Juror No. 1: Any person?

The Court: Anyone.

Juror No. 9: Newspapers?

The Court: I think I had better repeat the question. Will you please put your hands down. This is the question

again:

Is there anyone on the jury who has talked with anyone who claimed to have had any firsthand information regarding the offense here charged? I will repeat it again. Is there anyone on the jury who has talked with anyone who claimed have had any firsthand information regarding the offense here charged? Please raise your hand. Now, has anyone ever expressed to any of you an opinion, I mean by expression, oral expression, has anyone ever expressed to any of you an opinion as to the guilt or innocence of the defendant? All right, No. 1, No. 3, No. 5, No. 6, No. 9, No. 10, No. 12.

I noticed that in response to my first question as to whether any of you had ever heard of this case before that all of you indicated you had except No. 3. Now perhaps some of you may have read about this matter in the newspapers or heard about this matter by radio or seen and heard of [fol. 33] matters connected with this case directly or indirectly on the television. I am going to question you on that subject, but before I do, I wish to explain that the mere fact that you may have read in the newspapers an account of the alleged crime or heard an account of the alleged crime on the radio or on TV, heard and saw something connected with the alleged crime, or the mere fact that you may have read in the newspapers or heard on the radio or seen and heard on TV something concerning the defendant, does not necessarily in and of itself disqualify you as sitting as a juror. If the Constitution and law were to say that, then that would mean that the jury would be illiterate, couldn't read, couldn't hear and couldn't see. Of course, as stated, it shows you how ridiculous such a rule would be. People who read, see and hear are not just for that fact excluded from serving on the jury. So the test is not whether you have read about it, heard about it, or seen or heard something about it through some media of communication, the test is whether if you were drawn on the jury you would be able to enter upon the trial with an open mind and disregard what you have read, decide the issues in this particular case entirely and purely upon the evidence received at the trial and the law as given to you by the instructions of the Court. And I know you know, having served on other juries, that the instructions of the Court are the law regardless of what your personal opinion of the law may be or should be.

To put the same thing in another way, and I am not now [fol. 34] asking you a question to answer yet but I want you to keep this factor in mind, the problem of this question of reading, hearing, and seeing as a member of the public might be put this way. Do you now have an opinion or an impression as to the guilt or innocence of the accused which would require evidence to remove from your mind? If you do have, it is not fair for you to sit upon this

jury and it would be a violation of the spirit and letter of the Constitution and laws of this State and of the United States. Neither side in this case should have the burden of having to remove from your minds preconceived opinions or a biased opinion already formed. Now intelligent persons know that impressions they have received from what they have read in the newspapers or heard on the radio or seen, read and heard on the TV, are not always true. No intelligent person would rest a decision upon such an impression without a more formal and more convincing type of proof. Now with those factors in mind as reference to this subject, I wish to ask you this question. I wish you to search your hearts and minds for the answer.

Now if any of you from what you have read do feel that you have in your mind an opinion as to the guilt or innocence of the defendant or such an opinion as would require evidence to remove by either side, please hold up your

hands.

The Court: No. 1. I thank you, sir, you may be excused. The Clerk will please call another juror.

The Clerk: Alfred Newton, 5907 37th Southwest.

[fol. 35] The Court: Mr. Newton, were you in the courtroom and sworn with the rest of the jurors?

Mr. Newton: Yes.

The Court: Did you see and hear the Court's general explanation of the case and introduction of the parties and their counsel?

Mr. Newton: Yes.

The Court: Did you hear and understand the questions that I posed to the jurors in the box?

Mr. Newton: Yes.
The Court: Would you have answered any of those questions by raising your hand?

Mr. Newton: Some of them, yes.

The Court: Can you tell me which ones they would have been f

Mr. Newton: I have heard of the case.

The Court: Heard of the case before. That was the first question.

Mr. Newton: And people have talked about the case to me.

The Court: Has any person talked to you about the case or given you information about this particular case from any firsthand information that person had?

Mr. Newton: No.

The Court: All right. Any of the other questions that I asked?

Mr. Newton: No.

The Court: I will ask you again, ladies and gentlemen, to give—and remind Mr. Newton of this last question—particularly it is addressed to Mr. Newton because [fol. 36] he wasn't in the box when it was asked. Do you have from what you have read or heard or seen in newspapers, on radio, TV, magazines, books, any question in your mind, any opinion as to the guilt or innocence of the defendant, that is, an opinion which would require evidence to remove from your mind?

Mr. Newton: No.

The Court: All right, sir.

Now it will be the decision of the Court under the law that the jury in this case when finally selected will be cared for by the court and not allowed to separate. That involves from the time of selection what I think will be bound to be comfortable arrangements for your living and eating during the process of the trial. At best, of course, any such arrangements do involve personal discomfort of a minor nature. No one is able to say accurately to you now or perhaps at any time until the conclusion as to exactly how long this case may take. It will be within reasonable limits. During the time that you, if selected as jurors in this case, are hearing the case until it is finally decided, the Court will not permit you to receive any newspapers or magazines or books or hear the radio or see the TV. You, of course, will have communication with your family both ways through the bailiffs who are the officers of the court charged with the care of the jury, and of course when selected many people will help you obtain your personal articles to be comfortable during the time. I do not feel that you will feel at the end of the case any discomfort [fol. 37] except the natural discomfort that might occur

as a result from being confined. I make this explanation, not because it is necessary to explain your duty nor my duty to each other when called to jury service,—that is one of the normal and natural things that may occur in any case, but I do it so that to give you the opportunity to answer this question: Is there anyone on the panel presently who will suffer any great inconvenience or ill health or personal loss different than the rest of the members of the jury by such confinement? If so, please raise your hands.

No. 1, 4, 6, and 10. No. 1, what is your-

Juror No. 1: Health.

The Court: Beg pardon, sir?

Juror No. 1: For health reasons.

The Court: Health reasons? Without embarrassment can you explain to the Court a little more what you mean by health reasons?

Juror No. 1: I have to be on a diet.

The Court: I see. A diet prescribed by a physician?

Juror No. 1: Yes.

The Court: And how long have you been on the diet? Juror No. 1: Oh, for years.

The Court: Now, No. 4, yes, sirt

Juror No. 4: I am self-employed in a partnership. I use many of my evenings and week-ends to help my partner in carrying out the business. It would throw an undue burden on him. It is difficult—

[fol. 38] The Court: And the next who raised their hand,

yes, ma'am, No. 61

Juror No. 6: It is just my family. If I knew some arrangements could be made for them. Right at the moment I don't have any, and I have five children.

The Court: Five children? You feel, however, that it is

possible to make arrangements

Juror No. 6: I think that maybe something could be done but I would want to see that they were taken care of before I would maybe be here for a week.

The Court: Have you ever made previous arrangements for being away from the children for vacations for any

length of time?

Juror No. 6: I have been away from them, yes.

Juror No. 9: Mine is strictly business. If I were away from the office for ten days to two weeks it would be a little inconvenient.

The Court: What is your business, sirf

Juror No. 9: General freight agent, Greenbay and Western Railroad.

The Court: The next gentleman who raised his hand in

Juror No. 8: I have to be at my job next week, Judge,

and I would like to finish that job.

The Court: What kind of work do you do?

Juror No. 8: Bricklayer, and-

The Court: By whom are you employed?

Juror No. 8: My work is on University Way.

The Court: How long have you been on jury service! [fol. 39] Juror No. 8: I got four more days to go.

The Court: The Court will excuse Mr. Newton, will you step down. Mr. Newton, at 1:30 you will report back to the Department of the Presiding Judge, Room 915, this

building.

I see that it is a moment before noon adjournment time. Ladies and gentlemen of the jury, in the box and in the courtroom, in order to contribute to the orderly procedure and the selection of the jury panel in accordance with law, I would like to instruct you that from now until you are excused from this case all of you, even though I will permit you now to go your separate ways until 1:30, I wish to advise you not to discuss this matter directly or indirectly with any person whatsoever, even and including personal arrangements. All those matters, when necessary with regard to personal arrangements, will be taken care of by the bailiff to your satisfaction, I am sure. It is very important in order to keep an open mind that you do not discuss this matter among yourselves or with any other person until you are concluded with your service in this department and in this case. You may now be excused to return in time for court session at 1:30 this afternoon.

Court will be at recess until 1:30.

(Whereupon, at 12:00 noon, a recess was had until 1:30 o'clock P.M.)

[fol. 40]

Afternoon Session

December 2, 1957 1:30 o'clock P.M.

(All parties present.)

(In Chambers.)

Mr. Burdell: I would like the record to note an objection and exception to certain of the Court's statements on instructions in connection with impanelment of the jury and I have reference to a statement by the Court that in a criminal case all twelve must agree, which in my opinion is prejudicial for the reason that—for the same reason that I pointed out with respect to the booklet this morning, and that is that it is in effect an instruction to the jury they must return a verdict in the case and it is possible that there can be or could be a disagreement of the jury. I would like to note an objection and exception to the Court's statement to the jury that the question is—the Court's question as to whether or not they have an opinion regarding the guilt or innocence of the defendant. The Court's instruction that that is the question which they must determine because I believe that a prejudice against the defendant whether or not it results specifically in guilt or innocence in this case but a general prejudice arising from other matters and other charges against the defendant or arising from the defendant's past-actions and career might create such a prejudice that while the jurors have no opinion as to the guilt or innocence in this par-[fol. 41] ticular case, they might nevertheless be unable to return an impartial verdict. The third thing is that I would like to note an exception and objection to the Court's instruction or statement to the effect that no intelligent person would permit newspaper reports, television reports, radio reports, things of that sort, to influence them or to influence their minds in any way because I believe that that statement may have a tendency on the part of the jurors to restrain themselves or make it difficult for them to answer further questions in the course of their impanelment respecting whether or not the newspaper reports and television reports and radio reports have created some prejudice or created some opinions in their minds. That is all.

Wait a minute, maybe I have something else. No, that is all.

Mr. Regal: I have only one request to make. I think possibly if the Court were to instruct the jury that the instructions that you gave on all twelve must return a verdict, whether it be acquittal or conviction does not necessarily mean that they are instructed they must all agree, something of that nature I am sure—you can word it much better but I feel if there is any possibility of that feeling that it could easily be erased by further conduct of the Court during your interrogation of the jurors now.

The Coart: The question about all twelve being compelled to agree, in case there has been any improper connotation, it would be cured by instructions. I have in mind to give at the conclusion of the submission of the case con[fol. 42] cerning deliberation and agreement which instructions may be the standard type of instructions given on this subject, which of course I will hear exceptions to and perhaps change it if warranted. The question of elimination of existence of possible prejudice will take care of itself in further voir dire examination of the jurors.

Concerning the newspapers, I think a person knows that

everything in a newspaper is not true.

And from the way it has been expressed would disclose that and probably if it does not we can determine that factor in the total context of the questioning of the jury. Exceptions are noted.

Mr. Burdell: That is all I have for the record. I have

one or two things off the record.

(Discussion off the record, in the absence of the Court Reporter.)

(The following occurred in open court:)

The Court: The Clerk will please call another juror for No. 1.

The Clerk: Tom R. Cox, 8025 45th Avenue Southwest.

The Court: Mr. Cox, were you sworn with the rest of the jurors this morning?

The Juror: Yes.

The Court: Did you hear the Court's reading of the indictment and introduction of the parties and their counsel?

The Juror: Yes.

[fol. 43] The Court: Did you hear and understand the questions that I asked the other jurors in the box?

The Juror: Yes.

The Court: Would you have answered any of those questions by raising your hand?

The Juror: I have heard of the case, yes.

The Court: That is the first question, as to whether you have heard of the case before. Would you have answered any of the other questions that I have asked—

The Juror: People have expressed opinions to me but

none claimed to have first-hand information.

The Court: Mrs. Cochrane, how long have you been on jury service?

The Juror: This is my fourth week.

The Court: Your term would normally come to an end-

The Juror: Well, the end of this week, the 7th or 6th.

The Court: Have you thought of the question with respect to the care of your children any further? Would your answer still be the same to that question, you don't know how you will take care of them if you are confined?

The Juror: I mean, I would have to have some time to

make some arrangements.

The Court: I think the Court will excuse Mrs. Cochrane in view of your long jury service from this case. You will report back to the department of the Presiding Judge. The Clerk will call another juror for No. 6.

[fol. 44] The Clerk: John N. Vukich, 2010 West 198th.

The Court: Mr. Vukich, were you in court and sworn with the rest of the jurors?

The Juror: Yes, your Honor.

The Court: Did you hear the Court's reading of the indictment and the explanation of the case and the introduction of the parties and counsel?

The Juror: Yes, I did.

The Court: Did you hear and understand the questions

that I asked the jurors in the box?

The Juror: Yes, I did.

The Court: Would you have raised your hand in answer to any of those questions?

The Juror: Yes, I have heard of the case, have read

about it.

The Court: That is the first question.

The Juror: Yes, your Honor.

The Court: Any of the other questions?

The Juror: Reople have expressed opinions to me about the case itself.

The Court: Any person claiming to have first-hand information or otherwise?

The Juror: Otherwise, your Honor.

The Court: Thank you. Any other questions that you would have answered in the affirmative?

The Juror: No, sir.

The Court: Mr. Bosna, the Court will excuse you from attendance in this case.

The Juror: Thank you.

[fol. 45] The Court: The Clerk will please call another juror.

The Clerk: Charles I. Brehn, 313 East 56th.

The Court: Mr. Brehn, were you in court and sworn with the rest of the jurors this morning?

The Juror: Yes, sir.

The Court: I didn't hear you, sir.

The Juror: Yes, sir.

The Court: Did you hear the Court's reading of the indictment and the introduction of the parties and their counsel?

The Juror: Yes, sir.

The Court: Did you hear and understand the questions that I asked the rest of the jurors in the box?

The Juror: Yes, sir.

The Court: Would you have answered any of those questions by raising your hand?

The Juror: Yes, sir.
The Court: Which ones?

The Juror: Well, I have heard of the case and lots of people have expressed opinions of the case and—

The Court: Have the expressions of opinion been from

anyone claiming to have had firsthand information?

The Juror: No, sir, and I truthfully don't believe I can

be unprejudiced in the case.

The Court: Yes, sir, you may be excused. I appreciate your answers to the questions. The Clerk will please call another juror.

The Clerk: Richard H. Frank, 5406 Kirkwood Place.

The Court: Mr. Frank, were you in attendance and sworn [fol. 46] with the rest of the jurors this morning?

The Juror: I was, sir.

The Court: Did you hear the Court's general explanation of the case and reading of the indictment and introduction of parties and counsel?

The Juror: Yes, sir.

The Court: Did you hear and understand the questions

that I asked the rest of the jurors?

The Juror: I have forgotten the sequence of them but I believe I would have raised my hand to the first question and no objection to the others.

The Court: Would you have raised your hand on any of

the others?

The Juror: I have heard previous discussion of the situation.

The Court: Will you speak just a little louder?

The Juror: People have expressed opinions to me but I don't believe that that has prejudiced me from listening to any evidence.

The Court: Were those expressions of opinion from persons who claimed to have firsthand information in this

matter?

The Juror: No, sir. Your Honor, sir, in regard to the jury being held every night, I would like to request consideration. We have five children from 4 to 11 years of age, the oldest is a spastic and is mentally retarded. I have requested he be taken to Buckley. I went before Judge Long last January. So far they haven't been able to find room for him. I am afraid if I were required to be away [fol. 47] from home for a considerable length of time it

would be hard for my wife. There is only my wife and we have no able-bodied relative. Both my parents are dead

and my wife's parents are both ill.

The Court: How long have you been on the jury panel? The Juror: Just started, sir, the latter part of November, I believe it was right after Thanksgiving. This October, I believe it was. I served actually one week and we had a two-week recess.

The Court: I think it proper to excuse you from this case, Mr. Frank. I thank you for your expression. Thank

you, sir. The Clerk will please call another juror.

The Clerk: Roy J. Arndt, 8334 46th Avenue Southwest. The Court: Mr. Arndt, were you present in court and sworn with the rest of the jurors this morning?

The Juror: Yes, your Honor.

The Court: Did you hear the Court's general explanation of the case and the reading of the indictment and the introduction of the parties?

The Juror: I did.

The Court: Did you hear and understand the questions that I asked the other jurors?

The Juror: Yes, sir.

The Court: Would you have answered any of those questions by raising your hand?

The Juror: No. 1, the question-

[fol. 48] The Court: As to whether you heard of the case before?

The Juror: I have read about it.
The Court: Any other questions?

The Juror: No, no, sir.

The Court: Since the panel now presently has upon it jurors that I have not asked concerning their previous service and types of cases and I did notice the raising of hands in the front row on that question, I would like to repeat that question again. How many of you have served in a criminal case from the beginning to the end while on this panel?

No. 1, 2, 3, 8 and 11.

How many have served on a criminal case that did not complete their service in that case? No. 1, 4 and 7. How many of you have not served completely through a civil case? No. 4 and No. 12, No. 3 and No. 12, excuse me.

The last matter that I covered with you ladies and gentlemen was concerning opinions resulting from what you may have read, heard or seen through various means of communication. I would like to ask all of you again the same question since the panel is now presently composed of others. If from what you have read, heard or seen by that means, or also from what someone has said to you not having firsthand information, you feel that you have in your mind an opinion as to the guilt or innocence of the defendant that would require evidence to remove, if you do, please hold up your hand. No hands are raised.

[fol. 49] I would like to ask you another question. Is there anything about the nature, the kind of a case this is, that would cause you to start into this trial with any bias or prejudice either one way or the other; if so, please raise

your hands.

Another question, seeing no hands, do you know of any reason at all why you could not try this case impartially? Yes, sir, No. 9. Do you feel you could not?

The Juror: I think I should be excused on account of the labor relations with Boeing's and the Teamsters' Union.

The Court: Yes, sir, you may be excused.

Mr. Burdell: Your Honor, you did not notice that No. 1 raised his hand.

The Court: I beg your pardon.

The Juror: Was this just some general question or should a Boeing employee be excused?

The Court: Well, no.

The Juror: All right. This gentleman expressed an opinion in answer to any reason at all why he could not try the case impartially.

The Court: He answered there was a reason with respect to some matter. Now is there anything in your mind of that

naturef

The Juror: No, no.

The Court: I will ask, ladies and gentlemen, when you raise your hands to raise them a little higher. I am sorry to have missed you. The Clerk will please call another juror.

[fol. 50] The Clerk: Elsie C. Fields, 1520 Melrose Avenue.

The Court: Miss or Mrs. ?

The Juror: Mrs.

The Court: Were you in court this morning and sworn with the rest of the panel, Mrs. Fields?

The Juror: Yes, I was.

The Court: Did you hear the Court's general brief explanation of the case and introduction of the parties and counsel?

The Juror: Yes, I did.

The Court: Did you hear and understand the questions that I asked the other jurors up to this time?

The Juror: Yes, sir.

The Court: Would you have answered any of those questions by raising your hand?

The Juror: Well, the first one, I had heard of the case.

The Court: You have heard of the case before. Yes, any
others?

The Juror: No.

The Court: Do you know of any reason why you could not try this case impartially?

The Juror: None that I know of.

The Court: I would like to have you ladies and gentlemen give care and attention to this question for it requires you to make some assumption and place yourself in the position of other people. It is very important that you con-

sider it carefully before answering.

Would each of you be willing if you were in the position [fol. 51] of the Prosecuting Attorney charged with the responsibility of handling this case for the State, or if you were in the position of the defense counsel and could look into the minds of the twelve jurors in the jury box as you can look into your own minds, would you be willing to submit a case of like importance and seriousness to you as such counsel, to twelve men and women in the same frame of mind that you are in at this time and feel sure that you would have a fair and impartial trial? If you would not so feel, please raise your hand. The Court will now permit each counsel to ask general questions of the entire panel concerning qualifications to sit upon the jury. Following that the Court will permit each counsel to ask each juror specific questions. During the course of such questioning and subsequent thereto each side, of course, will be permitted to make challenges for cause for consideration of the Court and has a duty to do so. Also in a case of this nature the law provides that each side has peremptory challenges to make without assigning any reason for the challenge and, of course, it is their duty to do so to the extent that they desire. I will ask you to please pay close attention to the questions which will now be asked.

Mr. Regal: Your Honor, I don't know whether you asked the jurors whether they knew of the witnesses or whether

you read the list of witnesses.

The Court: I did read the list of witnesses. You may

make such a question.

Mr. Regal: Yes. Do any of the members of this jury [fol. 52] now presently constituted know any of the witnesses that were listed personally? Not have you heard of them, but do you know of them?

The Court: Please raise your hands.

Mr. Regal: Please raise your hand if you do. If I have overlooked some of you, say something and I will stop.

The Court: No. 6.

Mr. Regal: I beg your pardon?

Juror No. 6: I believe there was a name mentioned about N. B. Lake.

Mr. Regal: Yes, he is a member of the Seattle-First National Bank. He is the vice-president and comptroller there. Do you know him?

The Juror: I have knowledge of him, I don't know him

personally.

Mr. Regal: I will go into that later. Would any of the jurors like the list of witnesses re-read?

The Juror: I would.

Mr. Regal: Very well. May I read it, Your Honor?

The Court: You may.

Mr. Regal: J. J.—and may I identify these people so it is easier for them to understand who they are, Your Honor, just by a short explanation, if Counsel has no objection?

Mr. Burdell: I have no objection.

The Court: You may.

Mr. Regal: J. J. Davies, assistant director of the Department of Licenses in Olympia; Roger Jones, administrator of the Motor Vehicle Department of Licenses; M. J.

[fol. 53] Devine, office manager of Ryan Cadillac Company; E. E. Hepper, assistant manager, Metropolitan Branch, Seattle-First National Bank; Alfred Roger Hill, employee of Sunset Automotive in Ballard; Charles V. Leaf, another employee, or one-time employee of the Sunset Automotive in Ballard; Martin B. Duffy, I won't identify him any further than that. He is just a person. Donald D. McDonald, bookkeeper Western Conference of Teamsters. N. B. Lake, vice-president and comptroller, Seattle-First National Bank. Carl Huston, an accountant employed by Lobe & Block, Friedman, Lobe & Block; Frank W. Brewster, chairman of the Western Conference of Teamsters; William F. Devin, attorney.

The Juror: I have known Mr. Devin in the past.

Mr. Regal: Do you know him personally?

The Juror: No.

Mr. Regal: Just know of him.

Juror No. 6: I have a personal acquaintance with Mr.

Hepper of the Seattle-First National Bank.

Mr. Regal: That is all as far as the witnesses are concerned, Your Honor. Now have any of you or any member of your family or any relative or close friend ever been involved in any way in a criminal case? That is, as a witness, as a victim, or even a defendant? Has any close friend or relative in any way been involved in a criminal case? Do any of you jurors know anyone in the Prosecuting Attorney's office, Mr. Carroll or any of his deputies, or Mr. Burdell, Mr. Keough, or anybody in Mr. Burdell's firm or working on this case? I will list them and Mr. [fol. 54] Burdell can correct me if I am wrong.

William H. Ferguson, William Wesselhoeft, Phil De-Turk, John Keough, co-counsel, and Dennis McFeeley, the young man sitting at the edge of the bench there on the first

bench.

Do any of the jurors in the box know any of those people personally or otherwise?

Mr. Burdell: I probably should correct you. They are

not all working in this case.

Mr. Regal: No, there are some of them in your firm. That is all the general questions I have, Your Honor. I

am certain that everything else I want to ask will have to be handled on the other basis.

The Court: Any questions by the defendant?

Mr. Burdell: Just a few, Your Honor. I would like to know if any of the jurors know or are acquainted with any member of the staff of the Prosecuting Attorney's office, including Mr. Regal or Mr. Smith or Mr. Lee or Mr. Anderson, and I would like to know if any of you are employees of the County and if any of you have any relatives or close friends who are employees of the County. I would like to know if any of you have met or know or are acquainted with any member of the Grand Jury which sat last summer in King County! Do any of you know any of the members of the Grand Jury!

Juror No. 10: I don't know who was on the jury.

Mr. Burdell: I believe the Court asked you if you had heard of this case. I would like to ask if any of you have [fol. 55] heard of a case which involved Mr. Dave Beck, Jr., who is the son of the defendant in this case?

The Court: All hands were raised in response to that

question. Thank you.

Mr. Burdell: That is all, Your Honor.

May I ask one more general question, Your Honor?

The Court: You may.

Mr. Burdell: May II ask you if any of you observed the television proceedings or listened to the radio broadcasts concerning the hearings of the so-called McClellan Committee or United States Senate Committee which were conducted in Washington last summer?

The Court: 1, 2, 3, 4, 5, 6, 10, 11 and 12.

Mr. Burdell: That is all,

The Court: You may now inquire specifically, gentlemen.

[fol. 56] By Mr. Regal:

- Q. Mr. Cox, will you tell us your age, please?
- A. 46.
- Q. And your occupation, sir!
- A. I am at Boeing's, an industrial engineer.
- Q. How long have you been with Boeing's?
- A. Seven years.
- Q. What did you do before you went there, sir!

A. Taught school.

Q. What school?

A. I was at the University of Washington most recently.

Q. How long were you there?

A. Three years.

Q. What did you teach in school?

A. Mathematics.

Q. And did you teach in any other schools?

A. In the University of Idaho.

Q. And what did you teach there?

A. Mathematics.

Q. Mathematics; how long were you in Idaho, sir?

A. One year.

Q. And other schools?

A. In the public school of Baker, Oregon and the public schools of St. Anthony, Idaho.

Q. Does that pretty well cover your working career?

A. Except for the period during the war when I worked at Kaiser shipyard.

Q. What did you do there?

A. Expediting part of the time and accounting department part of the time.

[fol. 57] Q. Are you married, Mr. Cox?

A. Yes.

Q. How many children do you have?

A. Two.

Q. Two children. How old are they, sir?

A. One is 17 and one is 9.

Q. And the 17-year-old, is that a boy or a girl?

A. A boy.

Q. Is he going to school?

A. Yes.

Q. What school does he go to?

A. West Seattle High.

Q. Does he do any work at all?

A. Yes.

Q. What kind of work does he do?

A. He acts as delivery boy for a pharmacy in West Seattle.

Q. He doesn't belong to any union?

A. No.

- Q. Do you belong to a labor union? A. No. Q. Have you ever? A. Yes. Q. When you worked for Kaiser? A. Yes. Q. What union was that? A. Boilermakers'. I should mention also the Musicians' Union. Q. What instrument do you play? A. Saxophone and piano. Q. How long have you been with the Musicians' Union? [fol. 58] A. I am not presently a member. Q. How long were you in? A. About five years. Q. And does your wife work, Mr. Cox? A. She works part-time in a neighborhood grocery store. Q. Does she belong to a labor union? A. No. Q. What was the nature of the case that you sat on, the criminal case! A. It was a charge of-connected with drunk and reckless driving. Q. Traffic offense! A. Yes. Q. Was that prosecuted by the prosecuting attorney or
- by the city legal officer, if you know?

A. I believe it was the city.

Q. City, I see. Is that the only criminal case you sat on?

A. Yes.

Q. And this is your second or fourth week?

A. This is my fourth week.

Q. Starting of the fourth week?

A. Right.

Q. You are a native of what state?

A. Idaho.

Q. Your wife is a native of what state?

A. Nebraska.

Q. Has your wife ever held any other job other than the part-time job that she has now?

A. She formerly taught school.

Q. Was that in Nebraska or here!
[fol. 59] A. That was in Idaho.

Mr. Regal: I will pass Mr. Cox for cause, your Honor.

By Mr. Burdell:

Q. Mr. Cox, I didn't understand what your position was at Boeing's?

A. I am in industrial engineering.

Q. Now, I think you were one of those jurors who stated that you had heard some expression of opinion concerning this case?

A. Yes.

Q. Can you tell me where you heard those expressions?

A. In general conversations, people that I meet in my work and as I travel back and forth to and from work.

Qa Can you state the names of any of the persons who made any statement to you?

Mr. Regal: I think that is improper, your Honor, asking specific names. I don't think it's material.

Mr. Burdell: Your Honor, it might become material.

The Court: You may answer.

Mr. Regal: All right.

A. Well, they were general conversations, I believe that the two people I ride to work with expressed some opinions, that would be Donald Hahn and Donald Clingam.

Q. Would you spell those names for the Court Reporter!

A. H-a-h-n and Clingam, I think, is C-l-i-n-g-a-m.

Q. Now, Mr. Cox, can you state whether or not these [fol. 60] expressions of opinion were expressions of a hostile and adverse nature toward Mr. Beck?

A. No, I think jocular, rather than any serious expression

of animosity.

Q. Did you participate in these discussions?

A. To some extent.

Q. And did you make any statements of opinion or expression of any sort concerning your attitude toward Mr. Beck?

A. Toward Mr. Beck in general, but on this particular case I said I had no opinion.

Q. You have heard then, I take it, conversations or you have participated in conversations and discussions concerning Mr. Beck in general as distinguished from this particular case, is that correct?

A. Yes.

Q. And in those discussions relating to Mr. Beck in general, have you participated in discussions in which statements of prejudicial or hostile nature were made?

A. Yes.

Q. And have you made any such statement?

A. Yes.

Q. I take it then, Mr. Cox, that in a general way as distinguished specifically from this case, you do have a prejudicial attitude toward Mr. Beck?

A. Yes.

Mr. Burdell: I think the juror should be excused, Your Honor.

The Court: Mr. Cox, has something arisen subsequent to my questioning you in reference to partiality to change your mind?

[fol. 61] The Juror: No, I understood the question applied to this particular case and I feel I am impartial on this particular case.

The Court: Did I misunderstand your last answer! Will

you put the question again, please?

By Mr. Burdell:

Q. I think my question, Mr. Cox, is this. I will put it this way. As I understand it, you do have a general prejudice against Mr. Beck as distinguished from any knowledge concerning this particular case, is that a correct statement?

A. Yes.

The Court: Using Mr. Burdell's words, would that general prejudice you may have against Mr. Beck affect your determination and fair consideration of this case?

The Juror ; I believe not.

The Court: I want to be sure that I understand you, Mr. Cox. Referring back to general questions that I asked with respect to placing yourself in a position of either party or their counsel, if you were in either of their positions or both and we now here are concerned with your state of mind, would you be willing to have such a case that would be important to you in that position tried by twelve jurors in the state of mind you presently are in?

The Juror: Yes.

The Court: You may continue questioning, Mr. Burdell. Mr. Burdell: Thank you, your Honor.

Q. Mr. Cox, this general attitude of prejudice which you [fol. 62] feel you have, and thank you for telling me, toward Mr. Beck, I take it is based upon numerous charges which you have heard made concerning him during the past several months, or does it go farther back than that?

A. No.

Q. And these were things that—were some of these things part of the hearings of the McClellan Committee that you listened to?

A. Partly that, yes.

Q. And did you hear or listen to charges made by Senator McClellan in the course of those hearings?

A. Part of that, yes.

Q. And by Mr. Kennedy, the counsel for that committee!

A. Partly.

Q. And then I think—let me ask you this, Mr. Cox, did you watch or observe any of the television proceedings before the McClellan Committee at which time Mr. Beck appeared?

A. Yes, I saw him on television.

Q. Did you see him the two times he appeared before the committee or just once?

A. Part of one appearance.

Q. Part of one appearance, and I take it then that you recall what took place, the fact that he did not answer any questions.

A. That is the thing I remember.

Q. Is that one of the things that would create or contribute to the prejudice which you have in your mind?

A. I believe it is.

[fol. 63] Mr. Burdell: Your Honor, I think under the Grunwald Decision in I Law Edition, I think that this

witness, no matter how much he tries, would find it very

difficult to be impartial.

Mr. Regal: Your Honor, the State joins with Counsel in asking that the Court excuse Mr. Cox. I think Mr. Cox is being honest.

The Court: Mr. Cox, you may be excused, and thank you.

The Clerk will call another juror.

The Clerk: Inez R. Degering, 417 North 36th.

The Court: Miss or Mrs.1

The Juror: Mrs.

The Court: How do you pronounce your last name?

The Juror: Degering.

The Court: Thank you. Mrs. Degering, were you in the courtroom and sworn with the rest of the jurors this morning?

The Juror: Yes.

The Court: Did you hear the Court's explanation of the case in general?

The Juror: Yes.

The Court: Did you hear and understand the questions that I asked the other jurors and these are the questions that the Court asked the other jurors?

The Juror: Yes.

The Court: Would you have raised your hand in answer to any of those questions?

The Juror: Well, number one, that I have heard of the

case.

[fol. 64] The Court: I see, and any of the other questions?

The Juror: I don't think so.

The Court: Mr. Regal, you may inquire.

^a Mr. Regal: Your Honor, I will ask the general questions that I asked before, if I may.

The Court: You may.

By Mr. Regal:

Q. Mrs. Degering, have you or any member of your family or any close friend ever been involved in any way in a criminal case?

A. No.

Q. That is as a victim or witness or anything at all. You have no experience at all with criminal matters?

A. No, I haven't.

Q. This is your first jury duty as a juror in a criminal

A. About twenty years ago I was on a jury and it was on that case out at Golden Gardens where a girl was picked up, you know, kidnapped. That is the only one.

Q. You were on the jury at that time?

A. Yes.

Q. And did anything occur during the course of that trial that would tend to prejudice you in a case of this nature now, or have you forgotten almost every part of it?

A. It is hard to remember the names.

Q. Did you hear the list of witnesses that I read?

A. Yes.

Q. To the jurors. There is a few additional witnesses [fol. 65] that I failed to read because the State does not at this time intend to call them, but may I read those again. Your Honor, to all the jurors, the remaining witnesses?

The Court: The Court will read the list of witnesses.

Mr. Regal: Thank you, your Honor.

The Court: M. J. Devine, Frank F. Dutton, N. B. Lake. Martin B. Duffy, Donald D. McDonald, Ken Eline, David L. Forest, Alfred Roger Hill, Charles B. Leaf, Carl E. Houston, Ludwig Lobe, Samuel B. Bassett, Frank W. Brewster, Marcella M. Guiry, William H. Marx, Russell Schley, Louise Sartor, E. E. Hepper, J. J. David, Roger Jones, and William F. Devin.

Q. Mrs. Degering, do you know any of those personally!

A. Not personally.

Q. You have heard of some of them, but you don't know anything about them?

A. That's right.

Q. Do you know anything about them that would tend to prejudice you in this case against either side?

A. No.

Q. And do you know Mr. Burdell or Mr. Keough, the defense attorneys?

A. No.

Q. Nor any member of their firm?

A. No.

Q. Nor any of the other attorneys I read?

A. No.

Q. Do you know any member of the prosecuting attorney's staff, Mr. Carroll or any of his deputies?

[fol. 66] A. No.

Q. Mr. Smith or myself?

A. No.

Q. Mrs. Degering, are you employed? A. Well, we have our own business.

Q. What business is that?

A. Wholesale distributor.

Q. What is the name of the business?

A. Loma Linda Foods.

Q. Foods!

A. Yes.

Q. Where are they located?

A. 417 North 36th.

Q. How long have you been in that business?

A. Oh, we have had it about twenty years.

Q. And you and your husband-

A. Yes.

Q. -he is the manager or owner?

A. He is the owner.

Q. He is the president, anyway?

A. Yes, he is the owner.

Q. You work with him in it?

A. Yes, I do.

Q. And do you have any children, Mrs. Degering?

A. We have two.

Q. How old are they!

A. Our son, he teaches at the University of Washington, he is 38.

Q. And the girl?

A. Our daughter is a teacher and she is 43.

[fol. 67] Q. Now, the son is going to the University, is he a married man?

A. He teaches in the school of dentistry.

Q. Is he married?

A. Yes.

Q. Does he have children?

A. Yes, one.

Q. How old is the child?

A. Thirteen months.

Q. He is a teacher in the school of dentistry at the University of Washington?

A. Yes.

Q How long has he been there?

A. He has been there I think about five years, it would be around that.

Q. What did he do before he went there?

A. He was in the Navy.

Q. As a dentist?

A. No; no he wasn't. He finished college and started dentistry.

Q. Has he been teaching for five years?

A. Yes.

Q. And the girl, what does she do, Ma'am?

A. She is a teacher and she is in California.

Q. What sort of teaching does she do?

A. First grade.

Q. Did she take her training here?

A. Part at the university and part at Walla Walla College.

Q. And she is where in California?

A. At Garden Grove.

[fol. 68] Q. What is that close to?

A. It is close to Long Beach.

Q. How long has she been there?

A. A little over a year.

Q. And was she up here in Seattle before she went there!

A. Yes.,

Q. Did she teach here?

A. She taught over at Bremerton.

Q. Is she married?

A. Yes.

Q. What does her husband do?

A. He is an engineer for Douglas.

Q. Douglas Aircraft in California?

A. Yes.

Q. How long has he been with Douglas?

A. It's I believe about—it will be a year—it's either a year or two years in January.

Q. Has he been in aircraft work all the time?

A. Well, he taught some at the University of Washington.

Q. He is an engineer?

A. Yes.

Q. What sort of work did your husband do before he went into this wholesale distributing business?

A. Well, we were in school work part of the time. He

was manager for a couple of schools, manager.

Q. What kind of schools were they?

A. Oh, they were private.

Q. Private schools?

A. Yes.

Q. Have you a teacher's degree? [fol. 69] A. No.

Q. Did you go to the university?

A. No.

Q. Did your husband?

A. No.

Q. When you served on jury duty about twenty years ago, Mrs. Degering, is that the only criminal case you sat on that you can recall?

A. It was the only one.

Q. And this is your second or fourth week?

A. The second.

Q. And have you served on any criminal cases in the first two weeks?

A. No.

Q. I mean the first week?

A. No, it was the last week.

Mr. Regal: Pass Mrs. Degering for cause, your Honor.

By Mr. Burdell:

Q. Mrs. Degering, how large an establishment did you and your husband operate? How many people do you employ?

A. Just ourselves and we have part-time help.

Q. Do you employ anyone who are members of labor unions?

A. No.

Q. Have you ever had any experience with any labor union making any attempt to organize any employees that you have?

A. No.

Q. Have you ever been troubled in any way by any labor [fol. 70] union in connection with your work?

A. No, we haven't.

Q. Now, I think you said you had heard of this case. Can you tell me how you heard of it?

A. Oh, just in the newspapers and headlines and just like

that.

Q. Have you heard about it since you have been on this jury panel?

A. You mean just today or-

Q. No, since you have been serving as a juror.

A. I haven't read anything.

Q. Have you discussed it with anyone, Mrs. Degering!

A. Oh, we might just mention it at home, just like it was, the headlines or something that way.

Q. You think you might have discussed it, you mean, with

your husband?

A. We just barely mentioned it.

Q. Have you discussed it with any other members of the jury panel?

A. No. We might mention how it is going or something

that way. When Dave Beck, Jr. was up.

Q. You heard about that case?

A. Oh, yes.

Q. Did you talk to anybody who was a prospective jurer or a juror in that case!

A. No.

Q. Now, in connection with these discussions, have there been any hostile statements made towards Mr. Beck?

A. No.

Q. Not by either you or anyone to whom you have been

talking!

[fol. 71] A. No, I don't recall any. It was, I just overheard someone say something what they would do or something like that.

Q. Was that a juror?

A. No, it wasn't. It was just someone outside.

Q. Did that make any impression on your mind that would influence you in this case at all?

A. No, it didn't.

Q. And I take it that you have never heard any such statement by your husband which reflected—

A. No.

Q. Do you think, Mrs. Degering that whatever you may have heard you can put aside and consider this case as if

you never heard anything at all?

A. I think I could. The only thing, there is only one thing, it is a little bit hard for me to serve because of our business, that is the only thing. It's a little bit hard on account of our business. I have been helping my husband right along and that is the only thing I have to—I am not prejudiced or anything.

The Court: In what way is it hard?

The Juror: Well, I make the bills, all the invoices.

The Court: I can't hear you.

The Juror: I make all the invoices, all of that part. If it isn't too long he can manage.

The Court: What sort of items do you sell or distribute?

The Juror: Well, it is food.

The Court: Any particular season?

[fol. 72] The Juror: No, no, it's just flour and cereals and vegetables, canned vegetables and things like that.

The Court: Thank you. You may continue.

By Mr. Burdell:

Q. Mrs. Degering, would this problem of assisting your husband in the business, would that cause you in any way to become impatient—

A. No, it wouldn't.

Q. —with administering the trial of this case?

A. No.

Q. You think you could be just as patient with Mr. Regal and myself even though it might appear that we are doing something that we shouldn't do? You will understand, will you, we do it because we think we have to.

A. That's right.

Mr. Burdell: Pass Mrs. Degering for cause.

By Mr. Regal:

Q. Mrs. Cook, are you employed?

A. No, I have just been sitting here thinking. You asked if anybody knew of a prior case and I forgot about this, I don't know whether this would be a criminal case, but five or six years ago my husband put a down payment for a distributorship of a battery product in Seattle and the product never came and he had to go to court.

Q. You sued, that is a civil case, you sued someone?

A. Oh, is that different?

Q. And nothing occurred during that process that would tend to prejudice you either against the defense attorney, [fol. 73] Mr. Burdell, or against the State of Washington, the State had nothing to do with that?

A. No.

- Q. Mr. Burdell had nothing to do with it?

 A. No. You asked that and I just wondered.
- Q. That is a civil case. And that isn't what we are looking for. Now, you have served on a criminal case, have you not?

A. Yes.

Q. And nothing occurred during the course of that trial which would tend to prejudice you in this case against either side?

A. No.

Q. You realize, of course, every case is tried on its own merits and its own facts and anything that occurred has nothing to do whatsoever with this trial?

A. Yes.

Q. You understand that, of course?

A. Yes.

Q. Now, I asked you whether you were employed and you said no.

A. No.

Q. What does your husband do?

A. He is self-employed. He is the owner of an auto rebuild.

- Q. Auto rebuild? What is the name of that?
- A. Cooke Auto Rebuild.

Q. Where is that located?

A. 177 East 85th. 85th and Bothell Way.

Q. I beg your pardon?

A. I said it is closer to 85th and Bothell Way.

[fol. 74] Q. How long has he been in that business?

A. Just about a year now.

Q. What did he do before that?

- A. Before that we had a motel we built and ran, Seafair Motel.
 - Q. And how long were you in that business?

A. About three years.

Q. And what did you do before that?

- A. Before that, we had another auto rebuild.
- Q. Was that here in town?

A. Right.

- Q. Was that Cooke Auto Rebuild?
- A. No. that was Aurora Auto Rebuild.
- Q. All right, and how long was he there?

A. Oh, about seven years.

Q. Several years, and prior to that, or are we getting back to the beginning?

A. Prior to that we were in school.

Q How far through school did you go?

A. I graduated from college.

Q. What course did you take?

A. Business.

Q. Business administration? Did you go out here to the university?

A. Yes.

Q. When did you take your degree?

A. I graduated in '50.

Q. 19501

- A. Yes.
- Q. Did your husband go there too!

[fol. 75] A. Yes.

Q. What course did he take?

A. Business.

- Q. And do you have children?
- A. I have one son.

Q. How old is he, Ma'am?

A. He is four.

Q. And you have made arrangements to take care of him!

A. Well, I haven't, but I can.

Q. You can? And if, as Mr. Burdell asked you, if this looks like it is lagging and you get a little bit nervous you are not going to hold it against either one of us, are you, if we look like we are delaying the proceedings?

A. No.

Q. You understand there are legal problems that arise in these cases and they have to be handled as we go along. Being away from your son isn't going to upset you unnecessarily, is it, or you wouldn't be able to listen carefully to all the evidence and weigh it objectively?

A. Well, I don't think so, as long as I know he is all right. Right now I don't know how I will be able to make the arrangements. I mean, I have to talk to grandmothers.

Q. There are grandparents available in town and has the child been with them before overnight?

A. Yes.

Q. There is no emotional problem as far as you are concerned with the child then?

A. No.

[fol. 76] Q. Your husband can get along all right?

A. Yes, I know he can get along.

Q. Have you ever worked, Mrs. Cooke?

A. Yes.

Q. What kind of work did you do?

A. I was a stenographer for three years.

Q. For what organization?

A Savings and Loan:

Q. Savings and Loan. Now, has your husband ever been a member of any union?

A. No.

Q. Never has?

A. No.

Q. Has he ever had any difficulty with any union that you know of?

A. No, not that I know of.

Q. So there is no feeling against unions one way or another as far as you are concerned?

A. No.

Mr. Regal: Pass Mrs. Cooke for cause.

By Mr. Burdell:

Q. Mrs. Cooke, as I understand it you are still not sure you can make arrangements?

A. Well, I haven't talked to anyone today. I think it will

be all right. I just have to get it confirmed.

Q. Does your husband employ any union members?

A. Not now.

Q. Did he in his previous-

A. In his first auto rebuild it was much larger and he did [fol. 77] employ union help.

Q. And now I understand from what you say that it isn't

large enough?

A. No, it is just partnership with him and his father now.

Q. I see. The first one was the one on Aurora?

A. 92nd and Aurora.

Q. That you say he operated seven years?

A. Yes.

Q. Do you know what union his employees were members of?

A. I believe it had to do with something—auto rebuild workers or—

Q. Do you know whether or not he had any differences with the union during that period of time?

A. No, he didn't have any trouble with-

The Court: Can't hear you.

A. I said no, he didn't have any trouble with the union.

Q. Can you tell whether or not you or your husband as a result of the employment of union members, whether or not you had any difficulties, had any or have any prejudice which might affect you in this case because it involves the president of a labor union?

A. No, I don't believe so.

Q. Now, you are one of those who has heard about this case?

A. Yes, sir.

Q. And how did you hear about it?

A. Oh, just newspapers and television.

Q. And have you discussed it with anyone or have you heard discussions about it?

A. No, I haven't paid much attention to discussions.

Q. Have you discussed it with your husband?

[fol. 78] A. Well, we may have mentioned it or talked about it, but we haven't said one way or the other about it.

Q. Well, have you discussed Mr. Beck generally with your husband?

A. Yes, I have

Q. And has your husband expressed any attitude towards Mr. Beck in general?

A. No, he hasn't expressed an opinion.

Q. And have you any—expressed an opinion to your husband?

A. No.

Q. Would you say that any conversation that you and your husband may have had has been strictly noncommittal as far as Mr. Beck is concerned?

A. Yes.

Q. Would that be true with regard not only to this case but in regard to Mr. Beck and the charges in general which have been made against him?

A. Yes.

Q. Did you watch the proceedings of the McClellan Committee on television?

A. Not all, I saw part of them.

Q. Did you see the proceedings on the day or days when Mr. Beck appeared?

A. I believe I saw parts of those.

Q. And do you recall that Mr. Beck didn't testify or refused to testify?

A. Yes, I recall it.

Q. And at that time did you have any impression or ides which you still entertain concerning Mr. Beck or anyone [fol. 79] else's refusal to testify under such conditions!

A. I don't quite understand what you meant.

Q. Well, I am wondering if his refusal to testify impressed you in any way or formed any opinion in your mind concerning whether or not he was right or wrong in

doing so, which opinion or impression you can now state is one which you still have?

A. Well, at the time I had an impression, but it's been

quite a while ago and it's been erased by now.

Q. Well, can you tell me what your impression was at that time so I can find out?

The Court: That question should be posed in terms not calling for specific—

Mr. Burdell: Times?

The Court: Specific details.

Mr. Burdell: Yes, I understand.

Q. Well, was it at the time an impression or an opinion in your mind to the effect that he shouldn't have done it or had no right to do it?

A. Well, I think I had the opinion that he shouldn't have

done it, yes.

Q. Well, has anything happened between or since that time and now to change your opinion that he shouldn't have done it?

A. Well, it's been a long time ago and I think it's kind

of gone out of my mind by now.

Q. But as you look back upon your impression at that time it was that he shouldn't have done it?

A. Yes.

Q. And then isn't it true that now looking back on it you [fol. 80] now feel that he shouldn't have done it?

A. Well, I just don't know.

Q. Well, you're not sure at the present time whether or not it was something which he had a right to do or which he didn't have a right to do, is that it? Or which he should have done morally or shouldn't have done morally. You have no feeling about it at the present time?

A. Well, under the circumstances I think everyone is

entitled-

The Court: Can't hear your answer.

A. I just don't quite understand what he's driving at.

Q. Well, perhaps I can tell you. Maybe my questions haven't been clear. I understood you to say that at the time of the Senate hearings it was your opinion or impression

that he had no right to or shouldn't have done what he did, he shouldn't have refused to testify. I am just trying to find out if you still have that same idea at the present time.

A. You mean he shouldn't have had a right to testify?

Q. Well, let me start in again. I may be getting you mixed up. I am getting myself mixed up. I understood you to say that at the time of these hearings it was your opinion or impression that he shouldn't have refused to testify. Is that what you said?

A. Well, it would have been helpful if he did so, I guess

it's my opinion I believe he should have testified.

Q. Do you still have that opinion?

A. Do I still believe the same way I did last summer, whatever it was?

Q. Yes.

[fol. 81] A. I believe I do.

Q. Now, what I would like to find out is this. Has that impression or opinion created anything in your mind which you could describe as prejudice or bias towards Mr. Beck at the present time insofar as the deciding the issues of this case are concerned?

A. No.

Q. Do you believe that—put it this way. Can I be satisfied that whatever impression you had back last summer in connection with those hearings wouldn't affect your verdict in any way in connection with this particular case?

A. That's right.

Q. You think I can be confident of that?

A. Yes you can.

Mr. Burdell: I think I will pass Mrs. Cooke.

The Court: Mr. Regal?

By Mr. Regal:

Q. Mr. Ryan, can you tell me your age, please?

A. 31.

Q. And are you married, Mr. Byan?

A. Yes, I am.

Q. Have children, sir!

A. No.

- Q. How long have you been married?
- A. Eight and a half years.
- Q. Are you employed!
- A. Yes.
- Q. What kind of work do you do?
- [fol. 82] A. Purchasing Department at Boeing's.
 - Q. How long have you been there!
 - A. Five years.
 - Q. What was your employment before then?
 - A. I was a salesman for a fire fighter company.
 - Q. They sell fire fighting equipment?
 - A. Yes.
 - Q. Is that here in Scattle?
 - A. Yes.
- Q. Is Seattle your home town? Is this your native-
 - A. I was born in Bellingham.
- Q. Well, around this area. Have you ever lived any-
 - A. I lived in Canada for a number of years.
 - Q. Where in Canada!
 - A. Vancouver.
 - Q. Did you work up there?
 - A. I went to high school.
- Q. You lived up there with your family and went to high school?
 - A. Yes.
 - Q. Was your father employed up there?
- A. Prior to living in Vancouver we lived in a place called Vernon which is in British Columbia and he had a ranch there until he passed away.
 - Q. Is your wife employed, Mr. Ryan?
 - A. No, she is not.
 - Q. Has she ever been employed?
 - A. Yes.
- [fol. 83] Q. What kind of work?
 - A. Insurance adjusting as a secretary or as an adjustor.
 - Q. Was that all in this area here?
 - A. Between Seattle and Portland.
- Q. Now, you served on a jury trial trying criminal cases before?

A. Yes.

Q. What was the nature?

A. I believe second degree assault and attempt to rape.

Q. Did anything occur during the course of that trial that would tend to prejudice you against a man charged with a crime?

A. I believe not.

Q. When you phrased it that way, then there is always the inference that maybe there is something. Definitely not, is that—would that be your answer, or is there something!

A. We found the defendant not guilty.

Q. Well, that has no bearing actually on this case, has it, in your mind?

A. No, it has no bearing whatsoever.

Q. Now, what occurred in this other case would not affect your judgment in this case at all?

A. No.

Q. You can divorce your mind completely from the facts and circumstances and everything that occurred in that case and judge this case on its merits on what you hear in this courtroom, is that right?

A. I think I can, yes.

Q. I mean, you are not going to compare the two cases. [fol. 84] for example, you are not going to say, well, that other prosecutor when he cross examined he was more forceful, or he was less obnoxious, therefore you are not going to compare the two cases?

A. No.

Q. Compare the two defense attorneys, the two prosecutors, the judges or anything like that? You can cut that out of your mind completely?

A. That is an impossible thing to do, sir.

Q. Well, maybe. But you realize, of course, that the rules of evidence that are ruled upon by the Court here are the rules of this case and you are not to apply any other rules that you might have heard in another case?

A. Yes, I believe that.

Q. And the evidence and the quantity of evidence that is presented to this jury for their deliberation has nothing to do with the evidence or the quantity of evidence that you had in the other case?

A. No, I don't believe I would even think about the other

case in comparison with this.

Q. That is what jurors usually say and when you hesitated and qualified it somewhat I thought we had better go into it. Now, Mr. Ryan, in the purchasing department at Boeing's do you belong to any union?

A. No, sir.

Q. Have you ever belonged to a union?

A. No.

Q. Of any kind? Have you ever had any difficulty with the union or any of its officials?

A. None.

[fol. 85] Q. Do you have any prejudice at all against unions or their officials?

A. No.

Q. You hesitated then. You were just merely thinking to make sure?

A. (Witness nods.,

Q. And being so young it doesn't take many questions to go back into your working background. Have you done any other kind of work other than salesman and purchasing at Boeing's?

A. It has been some time, I spent some time in the United

States Army.

Q. What did you do there, sir?

A. I was in the Infantry.

Q. What rank did you hold?

A. P.F.C.

Q. Did you go to the university at any time?

A. I went to the university in Portland.

Q. Where?

A. Portland.

Q. Portland. How many years did you go there?

A. I completed the four year course.

Q. Did you take a degree!

A. Yes.

Q. In what?

A. Sociology.

Q. I see.

Mr. Regal: I'll pass Mr. Ryan for cause, your Honor.

[fol. 86] - By Mr. Burdell:

Q. Mr. Ryan, I think you were one of those who stated that you had heard some discussion about this case. Am I correct about that?

A. I didn't know the specific charge against Mr. Beck.

I had not heard before coming into this court.

Q. I see, but have you heard some discussion or participated in some discussion about Mr. Beck?

A. Yes, I have.

Q. And has that been recently during the past few months?

A. Yes.

Q. And in the course of those discussions were statements of a hostile nature made about him?

A. I believe one person expressed an opinion that he

thought he was guilty and I discredited it.

Q. Thought he was guilty of something but you hadn't heard about this case, so I guess they were just saying he was guilty. Of anything.

A. Yes, that's right.

Q. You only heard one statement of that sort?

A. That's all I can recall.

Q. Now, have you ever expressed yourself in any statements of that sort, any statements or prejudice or bias or opinion as to his general guilt or innocence of any sort or any statement of that nature?

A. Not that I can recall.

Q. Tell me who it was or was it an employee or fellow employee that made that statement?

A. Yes, it was.

Q. How long have you been in the purchasing department there?

[fol. 87] A. Five years.

Q. And did Mr. Regal ask you if you were married?

A. Yes, he did.

Q. What did you say?

A. I said I was.

Q. What about newspapers, Mr. Ryan, have you read a good many newspaper articles concerning Mr. Beck!

A. Not about Mr. Beck. It's probably an accident, but I have not seen about this particular case.

- Q. Well, have you read newspaper articles in general during the past few months about Mr. Beck and charges that have been made against him?
 - A. I think the McClellan hearings.
 - Q. Did you watch them on television?
 - A. I think I watched recaps of them.
- Q. And I suppose if that is the case you watched the time or the appearance of Mr. Beck before the committee?
 - A. I recall he invoked the Fifth Amendment.
- Q. Did that have any impression or cause you to form any opinion towards Mr. Beck which you now—which now continues to exist in your mind in any way? What did you think of it then or now insofar as it might affect your opinion of Mr. Beck as a witness or your opinion of this case?

The Court: The question might call for an answer of specifics rather than attitude. You might rephrase it.

Mr. Burdell: I will rephrase it, your Honor, yes. Well, does the fact that Mr. Beck invoked the Fifth Amendment cause you at this time to have any prejudice toward him, [fol. 88] a feeling of antagonism or a feeling that he had no right to do this?

- A. No, sir.
- Q. You have no prejudice against anyone who under certain circumstances invokes the Fifth Amendment, is that correct?
- A. Yes. His attorneys instructed him evidently to do that.
- Q. Do you have any prejudice against attorneys who instruct their clients to invoke the Fifth Amendment?
 - A. No, sir, I don't.
- Q. Well, in any event you didn't see me on television on that occasion.
 - A. If you were there, I don't recall you.
- Q. Well, you don't recall me as having been the attorney who did so instruct him?
 - A. No, I don't.
- Q. Did you hear during the course of those hearings certain charges or assertions or claims made by members of the Senate Committee, including, for example, Senator McClellan, do you recall any of the charges or assertions that Senator McClellan made?

A. I believe he was quite angry or put out about Mr. Beck invoking the Fifth Amendment.

Q. That is the only thing you recall?

A. That is all I recall now.

Q. Now, would the fact, I take it from what you said that regardless of what Mr. McClellan thought about Mr. Beck invoking the Fifth Amendment, you still feel that he had a right to do so if his attorneys instructed him to do so, is that correct?

[fol. 89] A. That is the way I feel, yes.

Q. In other words, I don't have to worry about the fact that you might be overly impressed by the attitude of the United States Senator concerning that matter?

A. No, I believe not.

Mr. Burdell: Pass this juror for cause.

[fol. 90] RAYMOND J. KRAATZ, 4134 West Monroe Street (whereupon, promising to true answer make to questions propounded to him touching upon his qualifications to act as juror, was duly sworn).

Voir dire examination.

By Mr. Regal:

Q. Mr. Kraatz, what is your occupation, sir?

A. Self-employed.

Q. You are in a partnership with another person, and what is the—

A. We operate coin-operated washers and dryers in apartment buildings, military installations.

Q. How long have you been in that business?

A. About six years.

Q. And how long have you been on jury duty?

A. This is our fourth week.

[fol. 91] Q. And when you are on jury duty, have you been working nights?

A. Just as an emergency comes up. Not regularly. We never do.

- Q. Your partner has been holding his own for at least three weeks?
 - A. Yes.
- Q. Do you feel that this problem or this burden on your partner is going to be so bad you are going to be impatient with Counsel and the Court in the event there are natural delays that we have in criminal cases?
 - A. No.
- Q. And you will not hold it against either Counsel or Judge or anyone else?
 - A. No.
- Q. We might not excuse you. Now you said that you worked on a case before where the case was continued. Was that a criminal case?
 - A. Yes, sir, it was. It was—we barely got started.
- Q. Don't go into specifics. Was it a case that was handled by the prosecuting attorney's office or the city?
 - A. It was the city.
 - Q. I see. A city appeal on a misdemeanor?
 - A. It was a traffic case.
- Q. Traffic case. You haven't sat on a case involving the State of Washington or the Prosecuting Attorney's office?
 - A. No.
 - Q. Now are you married, Mr. Kraatz!
 - A. Yes.
 - Q. Do you have children?
- [fol. 92] A. Two.
 - Q. How old are they, sir?
 - A. Thirteen and ten.
 - Q. Boy or girl?
 - A. Both girls.
 - Q. Are they both going to school?
 - A. Yes.
 - Q. Does your wife work!
 - A. No.
 - Q. Has she ever worked?
 - A. Yes.
 - Q. What kind of work has she done?
 - A. Accounting, bookkeeping, cost accounting.
 - Q. You don't have her working for your partnership?
 - A. Yes, she does the bookkeeping.

Q. You don't pay her?

A. Ex officio.

Q. What kind of work were you doing before you went into this partnership?

A. Selling, representing a company, installing self-ser-

vice laundries in the Northwest.

Q. You have been in that work for quite some time!

A. No, that was just a period of four years.

Q. And what did you do before that?

A. I was plant superintendent for Custom Manufacturing Company.

Q. Here in town?

A. Yes.

Q. How long were you with them?

A. A little over four years.

[fol. 93] Q. And before that, sir?

A. The Army for almost five years.

Q. Takes it back quite a ways. What did you do before that?

A. I was in business for myself in Chicago.

Q. How old are you, Mr. Kraatz?

A. 42, I got an early start.

Q. You notice I am only asking the men how old they are. What did you do in the Army?

A. I was an officer in the Cavalry.

Q. That is World War II?

A. The big war.

Q. I don't think-did they still have horses?

A. Well, no, actually we were mechanized, but still the Cavalry.

Q. And what did you do before that?

A. I was in business for myself as an insurance broker in Chicago.

Q. Is Chicago your home?

A. Born in Chicago, yes.

Q. How old were you when you came out here?

A. I came out here after I got out of the service in '45.

Q. You have been here ever since?

A. Yes.

Q. Have you lived in any other city?

A. Just Chicago.

Q. Your wife is a native of Chicago?

A. No, Florida.

Q. And your children have been born—not in Seattle—but one in Seattle?

A. One in Seattle and one in Olympia.

[fol. 94] Q. Were you working in Olympia?

A. No, I was overseas at the time and my wife was living with her folks.

Q. I see. Now I think we have covered it pretty well. I was thinking—this is your second or fourth week?

A. Fourth week.

Q. And you served only on civil cases before?

A. Yes.

Q. Have you ever been called for a criminal case and excused?

A. No, just the one that was mentioned.

Mr. Regal: Pass Mr. Kraatz for cause, Your Honor.

The Court: It is time, ladies and gentlemen, for the afternoon recess. I want to remind the jurors in the box and in the courtroom of the Court's instructions at noon not to discuss this matter between them or with any other person. The jurors in the box may now retire to the jury room.

(Jury leaves jury box.)

(Recess.)

The Court: Bring in the jury, please.

(Jury enters jury box.)

The Court: Please be seated. Mr. Burdell, you may continue your examination of Mr. Kraatz.

Voir dire examination.

By Mr. Burdell:

Q. Mr. Kraatz, did I understand you to say that you had worked for the Crescent Company?

[fol. 95] A. That's right.

Q. Is that the company that manufactures spices?

A. That's right.

Q. How long did you work there?

A. A little over four years.

Q. What position did you have there?

A. I was assistant production manager and plant superintendent.

Q. And were you in charge of any people or employees who were members of labor unions?

A. Yes, virtually all of them.

Q. Did you have anything to do with the collective bargaining or negotiating of contracts?

A. Not the actual collective bargaining as such but more

grievances.

Q. What union?

A. Warehousemen's Local 174

Q. And in connection with grievances what was your function?

A. Oh, generally handling the grievances when the committees from the local unions came down to air them.

Q. Did you represent the employer?

A. That's right.

Q. In connection with those things,—now do you have any or was your experience such that would cause you to have any prejudice whatsoever of any sort for labor unions and particularly Local 174?

A. Some of our problems were rather difficult.

Q. And I understand what you say, that from time to time you felt the position of the labor union was not well founded or was incorrect or something of that sort? [fol. 96] A. Well, most of the laws at the time were rather difficult for us to operate under and the unions took advantage of it.

Q. Do you think-you say the laws at the time. Are you

talking about some federal law?

A. Yes.

Q. Is that prior to the passage of the so-called Taft-Hartley Act?

A. Yes.

Q. And you felt that the previous law, the Wagner Act, created some advantage on the part or for labor unions which they took unfair advantage of?

- A. Well, it posed a handicap for us more than anything else.
- Q. Well, do you mean to say in any case or in any instance that you know of, the representatives of Local 174 did anything or performed any act which they were not entitled to perform under the law?

A. No, I wouldn't say that.

Q. Well, can you tell us who you dealt with in Local 174? By the way, do you know whether or not Local 174 is part of the Teamsters' Union?

A. It is.

Q. Can you tell us who you dealt with in that union?

- A: One name that comes to mind at present, it's been quite a while ago and the only name that I can think of is Mr. Cavano.
 - Q. And you did have some experience with him?

A. Yes.

Q. And from time to time did you have disputes with him of one sort or another?

[fol. 97] A. Oh, I wouldn't say they were disputes.

Q. Differences of opinion?

A. Well, yes, friendly arguments.

Q. Yes. Well, could you say that at all times your arguments or your disputes or differences of opinion with Mr. Cavano were of a friendly nature?

A. Well-

Q. That is, friendly disputes?

A. None I can say—well, yes, they were friendly enough disputes. It is hard to differentiate where they stopped being friendly, but—

[fol. 98] Q. Have you had any other experience in labor relations besides your experience with the present company?

A. Personally, no.

Q. But are you familiar in a general way with the problems of labor relations and negotiations of collecting bargaining agreements?

A. Yes.

Q. And would you say that Mr. Cavano or any—or the disputes or the differences between yourself and Mr. Cavano or anyone else in Local 174 were to your knowledge or

belief any different than the disputes generally or which frequently arise between employers and unions? Were they of a more bitter nature or do you have any reason to feel that Local 174 was acting differently or more unfairly from what you have heard about labor unions in general?

A. No, no.

Q. How long did you handle these grievances or the matters of Local 174? Did you do it during the entire four years?

A. Just about four years, it's a little over four years,

yes.

Q. When you left the Crescent Company then, you immediately went into business for yourself?

A. No. I went to work for a trucking concern for just a short period of time.

Q. How long was that?

A. Well, it was about eight months, seven months, I believe it was.

Q. Did you have anything to do with labor relations there?

[fol. 99] A. Only to the extent of calling the union hall

to get drivers.

Q. Whatever differences of opinion you had with Mr. Cavano, is it your feeling or belief that in some way Mr. Beck is responsible for whatever it was that you felt Local 174 was doing improperly?

A. No, I can't say that.

Q. Can I feel reasonably sure that your experiences with Local 174 would have no effect whatsoever in this case!

A. Oh, I don't think so.

Q. Well, I have to be kind of sure.

A. Well, the only thing I have to say is that some of the problems put forth and argued at the time were pretty unfounded and difficult from the standpoint that they were unreasonable and under the laws at the time it was difficult for us to handle them, and they took advantage of the situation.

Q. Well, if you think that they took advanatge of the situation or of your employer, am I right then in concluding that you have at this time some sort of prejudice against the Teamsters Union as a result of that experience?

A. No, I don't think I have a prejudice against the union at this time.

Q. Did you have a prejudice against them at that time?

A. I did then, yes.

Q. And what has happened between then and now to

erase that prejudice?

A. Well, most of all I don't have to deal with them any more and secondly, the laws have been changed so they [fol. 100] are more fair.

Q. As far as you know now, Mr. Kraatz, Local 174 is complying with the existing law relative to labor relations?

A. I presume so. I am not in touch with them any more.

Q. Well, you have no reason to believe that they are not?

A. No.

Q. Now to go back, I am wondering if I can be sure that you recall your last answer was something in terms of "you think so". Can I be sure that that experience won't in any way prejudice you against Mr. Beck in this case!

A. No, excuse me-I will not let prejudice enter into the

thing. I will weigh the case on its merits.

Q. When you say you won't let prejudice enter into it-

A. That was a poor selection of words. I am not prejudiced at the moment.

Q. All right. Now, I think you said that your wife does the bookkeeping for your company?

A. That's right.

Q. Does she work full time or part time!

A. Just part time.

Q. Is she the only bookkeeper that you have?

A. Well, my partner's wife does part of it but she is the primary bookkeeper.

Q. How large a business is that in terms of employees?

A. Just my partner and myself.

Q. Well, do you have truck drivers or-

A. No.

Q. How are their machines installed in apartments? Are [fol. 101] they installed by some company or firm?

A. We install them ourselves.

Q. I was wondering how you got them there? Are they delivered by the manufacturer?

A. No. In a car, station wagon.

Q. Oh, I see, you drive them there yourself?

A. That's right.

Q. You never had any trouble with the union in that connection, I take it?

A. No.

Q. That is the Teamsters Union?

A. We are just a small concern.

Q. You think you are too small for the Teamsters Union to be concerned with? In any event, you never had any trouble?

A. No.

- Q. Now, how much experience in bookkeeping has your wife had?
- A. She's had considerable experience. She handled all of the books for three concrete companies at one time.

Q. How long ago was that ?

- A. That was just prior to Pearl Harbor, for three or four years, I don't recall exactly how long.
- Q. She handled the books for three concrete companies all at once?

A. Yes, three different concerns for one company.

- Q. I see. Do you also have certified public accountants or licensed public accountants audit your books or check on the work of your wife or does she do it alone?

 [fol. 102] A. We haven't had. That can be done at any time that either one of the partners feel that it should be done.
- Q. Now, Mr. Begal asked you if you would be patient with us during the course of the trial and I would like to ask you if your business compulsions and functions would in any way prevent you from being patient with us, not only during the course of the trial but in the course of your deliberations? What I want to know is will your business affairs cause you, do you think, to arrive at a conclusion which might not be just the right one just in order to get away?

A. No.

Q. You will be fully patient at that stage as well as during the trial?

A. I can't help but smile. We were on a rather lengthy one quite a while ago and we did not let it interfere with our deliberations. Q. Now, Mr. Kraatz, you were one of those, I believe, who said that you had heard discussions of this case or of Mr. Beck, is that right?

A. Yes, the usual discussions.

Q. And do you believe that you can try the case or that I can be sure that you will try the case without any reference whatsoever to anything that you might have heard in those discussions?

A. Yes.

Q. And is that also true, Mr. Kraatz, with reference to any of the charges or assertions made in the course of the McClellan Committee Hearings? I think you probably heard some of those?

[fol. 103] A. Yes, I have heard snatches.

Q. The same thing would be true!

A. Yes.

- Q. Were you or did you observe the proceedings of the McClellan Committee at the time Mr. Beck appeared before the committee?
- A. Not in their entirety. I caught snatches and resumes in the news.
- Q. I am speaking specifically now of the time that Mr. Beek appeared and as Mr. Ryan said, invoked his privilege under the Fifth Amendment. Did you observe those proceedings?

A. Yes, I saw part of them.

Q. And did you have an opinion concerning the question of whether or not it was right or wrong for him to do so?

A. Oh, he has a right-

Q. And do you feel that way, do you still feel that way, that he has that right?

A. Yes, in that particular case.

Q. In that particular case you think there were specific or special circumstances?

A. Yes.

Q. Mr. Kraatz, do you have any feeling at all that there is an implication of guilt on the part of anyone by the assertion of their right not to testify under the Fifth Amendment?

A. No.

Q. Are you perfectly satisfied in your mind that the fact that Mr. Beck asserted his privilege under the Fifth Amend [fol. 104] ment has nothing to do with his—is no indication whatsoever concerning his guilt or innocence?

A. No, in this particular case I think he was perfectly right in doing so. I will qualify something. You made a broad statement, there might possibly be an implication of guilt. It is beyond the scope of this particular case but I think there are times when there is an implication.

Q. But in the instance that we were discussing under those circumstances, I think you qualified your answer to my broad question.

A. That's right.

Q. Your answer was that under those circumstances you would not feel that there was any implication of guilt whatsoever that would affect this case?

A. No, no.

Mr. Burdell: Pass Mr. Kraatz for Cause.

[fol. 105] By Mr. Regal:

Q. Mrs. Brown, are you employed, Ma'am?

A. No.

Q. Have you ever been employed?

A. Yes, I have.

Q. What kind of work have you done?

A. Secretarial work during the war for the Army.

Q. During the war!

A. And then after I worked-

The Court: Speak a little louder.

A. In about '45 after the war, then I worked for the Wholesale Appliance for a few years.

Q. What company was that?

The Court: Couldn't hear you, Ma'am.

A. Arthur McGee. It is now under a different name.

Q. Was that the same company you worked for as a secretary?

A. It wasn't secretary, it was more or less office work, records and things like that.

Q. Clerk?

A. Yes.

Q. Office clerk?

A. Yes.

- Q. Now, your husband does what kind of work, Mrs. Brown?
 - A. Where does he work, did you say?

Q. Yes, Ma'am.

A. Security Transfer.

Q. Security Transfer!

A. That's right.

Q. Where is that located?

A. Down here on Railroad Avenue, I believe, First and [fol. 106] Railroad, I think it is.

Q. Is he a driver?

A. No, he is the manager of the warehouse there.

Q. Manager of the warehouse?

A. Yes.

Q. Is he a member of the Teamsters' Union?

A. I said before, Teamsters, but I think Warehouse, isn't it Local 174?

Q. Local 174 of the Warehouse & Chauffeurs'-

A. Yes.

Q. But he is a member of 174?

A. I am quite sure.

Q. How long has he been a member of Local 174?

A. He's worked there since the war. He worked before the war and then he was in business for himself for a while and then he went back there.

Q. Over ten years?

A. It would be fifteen or maybe twenty years. I don't

realty know. It's been quite a long while.

Sin

Q. You also answered the Court's question when he asked whether you talked with anyone or heard any talk about the guilt or innocence of the defendant and you raised your hand on that. Was that conversation with your husband?

A. Yes, it was.

Q. Without telling us what it was, would that conversation tend to prejudice you one way or the other in this case?

A. I don't think so. The one reason I did not excuse myself is because I feel I have an open mind until I heard

[fol. 107] the other side. All I have heard is just one side.

Q. You have heard one side!

A. You asked me about the criticism and things and seeing the trial. I didn't see much of it. I saw some on T. V. but I didn't see very much.

O. Now, this conversation with your husband on this matter, does that necessarily put ideas and preconceived notions in your mind regarding Mr. Beck?

A. No. because I have my own reasoning and my own ideas. I know what he would say, but I have my own ideas. Just because he says I should, that doesn't mean that I would.

- Q. The Court also asked you a broad general question regarding if you were in the position of the defendant, the defendant's counsel or in the position of the State's attorney, the prosecuting attorney, you would want twelve people in your frame of mind trying the case if you were in the defendant's position?
 - A. Yes, I would.
 - Q. You would?

A. Yes.

Q. You feel that there is no danger at all that you would be prejudiced either against the defendant or against the State

A. No.

Q. Because of your background and because of your husband being a member of Local 174 which is a Teamster affiliatef

A. That's right.

[fol. 108] Q. Have you ever been a member of a union!

A. Well, a long time ago when I went to college I worked at the Bon and we were-

Q. What union was that?

A. I think that was under the Teamsters, it was so long ago. It was Betail Clerks' and I think—that was quite a while ago.

Q. Did you attend meetings at that time?

A. We did the first one or two, but that was all.

Q. Did anything occur at all during the course of time that you were a retail clerk that would prejudice you against the union?

A. No.

Q. You had no bad experiences?

A. No.

Q. Or no experiences contrary to that that would necessarily prejudice you against the State?

A. No.

Q. Mrs. Brown, do you have any children?

A. No, I don't.

Q. How long have you lived in this area?

A. Where I lived first?

Q. In the Seattle, Washington area, in this state, to start with.

A. I'd say about 1920.

Q. What is your home state, Ma'am?

A. I was born Michigan.

Q. Is that the only two states you have lived in?

A. Wisconsin.

Q. Wisconsin, Michigan and Washington?
[fol. 109] A. I went to school in Wisconsin.

Q. What college did you go to out here?

A. Washington.

Q. Did you take a degree here?

A. Yes, Bachelor of Science.

Q. What?

A. B. S.

Q. In what?

A. Physical education.

Q. Did you ever teach?

A. No, I didn't.

Q. Now, this is your second week of jury duty?

A. That's right.

Q. Beginning of the second week!

A. That's right.

Q. And the first week you did not serve on a jury trying a criminal case?

A. It was a civil case.

Q. Civil case only?

A. Yes.

Mr. Regal: Pass Mrs. Brown for cause, Your Honor.

By Mr. Burdell:

Q. Mrs. Brown, I don't recall whether or not, I don't think Mr. Regal asked you your husband's name. Will you tell me your husband's name?

A. Frank.

Q. And is he a supervisor or superintendent at Security.

Transfer?

[fol. 110] A. I guess you would call him manager. He is in charge of the drivers, sometimes he might take a truck

out, but as a rule he is in the department.

Q. Mrs. Brown, has he been in active union membership in the sense of attending meetings; does he attend meetings regularly or frequently to your knowledge? Meetings of the union?

A. I don't think he does.

Q. You don't recall that he attended any meetings at all with any frequency?

A. No, not that I recall.

Q. I think you said in response to one of Mr. Regal's questions that you wouldn't make up your mind until you heard the other side. Does that mean that you would have received some information which has created some opinion or impression and now you are waiting for me, let's say, the defense, to present the other side or disprove what you have heard?

A. What I had in mind was, as I said, I watched some of the other trial and of course, I didn't get very much information or form any really set idea. That is what I said, that I wouldn't want to say he is guilty or he is not guilty or this and that until I heard the whole side. I haven't heard any of the other side.

Q. Well, when you are speaking of the other trial, are you speaking of these hearings in the McClellan Committee!

A. I didn't hear enough of them, just a few. Five or ten

minutes. I really didn't hear very much of them.

Q. Well, from what you did hear, is there any opinion or [fol. 111] feeling in your mind which would require, let's say, the defendant to introduce evidence in order to dispel or overcome?

A. Well, I would say in some of the few questions, I have heard that I would say I would want to hear some of the other side.

The Court : I can't hear you, Ma'am.

A. I said I heard a little of the answers.

Q. What you are saying is that you heard the questions and, let's say, the assertions posed by members of the Senate Committee and then you weren't able to hear Mr. Beck's side because Mr. Beck didn't testify, is that what you were saying?

A. Yes.

Q. Now, did the fact that Mr. Beck didn't testify at that time create any opinion in your mind which you still have at the present time? Did it create any prejudice or feeling that he shouldn't have done it, or any bias or any hostile attitude toward him?

A. With relation to this trial, now, you mean, that is com-

Q. Yes.

A. No.

Q. Now speaking of your reference to the other side, did the assertions which you personally heard made by someone connected with the committee, did those assertions create any opinion-in your mind which now creates a situation where you were expecting the defendant to have to introduce some evidence in order to overcome some opinion which is in your mind?

[fol. 112] A. Well, the reason I brought that up, when

the question would be-the question mark-

Q. I will stand over here.

A. More or less of a question mark, you just wonder. You don't know definitely yes or no. Just a question mark. That is why I said I would want to hear the other side before I formed any opinion.

Q. What you are really saying is that you really didn't

hear any side, just the question and no answer?

A. Question, and I want to hear-

Q. —the answers?

A. -the answer.

Q. Now, the expression of opinions which your husband has given you or in connection with the discussion with your husband, have you ever expressed any opinion concerning Mr. Beck? That is, any expression of hostility or prejudice of any sort?

A. Well, no, not exactly. I might have said something wasn't done this way or that or what was his idea, but I don't think I came right out and said he is guilty or not

I haven't come to any conclusion.

Q. You mean you have expressed possibly some question as to whether or not the things he has done or been charged with were correct?

A. That's right.

Q. Has there been a doubt in your mind at times from things that you have heard whether or not he has acted correctly at all times?

A. Oh, yes, there's been a doubt.

Q. And do you still have that doubt in connection with [fol. 113] not only this case, but in connection with anything or any act or conduct that you may be familiar with?

A. That's true. There is a doubt, you might hear one side that isn't explained, or there is a reason for something.

Q. Now, does this doubt or this question create a situation under which I am going, as the defendant, I am going to have the burden of explaining to you that whatever he has done has been correct? I mean, are you going to be there as a juror waiting for me to explain and prove to you that what Mr. Beck has done has been correct? Is that the situation that exists now in your mind?

A. Well, I suppose in a roundabout way, yes, if there

is a doubt I would want to know.

Q. In other words, that is you have some feeling in your mind that is going to require the defendant to put on some evidence to overcome, is that the situation?

A. Well, evidence, that would be true in anything. You

would want a reason

Q. I mean, is there at the present time; there is a doubt in your mind and you are expecting me to have to put on some evidence to overcome your doubts, is that right?

A. Yes, I want to have an-some idea or-

Mr. Burdell: I don't think the juror is sure that she can be completely impartial, Your Honor. She says that, yes, as a matter of fact I understand her answer to my last question to be yes.

The Court: Mrs. Brown, the Court will excuse you, and thank you for your frank discussion of this matter. The

Clerk will call another juror.

[fol. 114] The Clerk: Clara E. Bingham, B-i-n-g-h-a-m, 319 East 55th.

The Court: Mrs. Bingham?

The Juror: Yes.

The Court: You were in the courtroom and sworn with the rest of the jurors this morning?

The Juror: Yes, I was.

The Court: Did you hear the Court's explanation of the case and reading of the indictment and introduction of the parties?

The Juror: Yes, sir.

The Court: Did you hear and understand the questions that the Court asked the jurors?

The Juror: Yes, I did.

The Court: Would you have raised your hand in answer to any of the questions that the Court asked the jurors?

The Juror: Yes, I have heard about the case and at one time I was a member of the Teamsters' Union and I would like to be excused on the ground that it would be an inconvenience because of my family.

The Court: Would you explain to me the inconvenience

with respect to your family?

The Juror: Well, I have four small children and leaving them at night for an indefinite period would be an inconvenience to me, as I haven't got a grandmother close at hand.

The Court: What are the ages of your children?

The Juror: The oldest one is four and the youngest one is four months.

[fol. 115] The Court: You may be excused. The Clerk will please call another juror.

The Clerk: John W. Vawser, 806 Southwest 99th.

The Court: Mr. Vawser, were you in the courtroom and sworn with the rest of the jurors this morning?

The Juror: I was, air.

The Court: Did you hear the Court's reading of the indictment and the explanation of the case and introduction of the parties and Counsel?

The Juror: Yes, sir.

[fol. 116] The Court: Did you hear and understand the questions that the Court asked the jurors?

The Juror: I did.

The Court: Would you have raised your hand in answer to any of those questions?

The Juror: I believe I would, sir.

The Court: Which one.

The Juror: Well, several of them, because I have read about it and watched it on T. V. and also on radio.

The Court: Any of the other questions with respect to the matters that I asked?

The Juror: Well, just we'll say a little friendly discussion between neighbors or something like that.

The Court: Do you know of any reason from the nature of this case why you could not try this case impartially?

The Juror: No, really I do not, because I will have to wait and hear-

The Court: I can't hear you.

The Juror: Not before I hear both sides of it, because before I would—like on T. V.—we only got the questions, no answers, so that would be beside the point here.

The Court: Gentlemen, you may inquire.

By Mr. Regal:

Q. Mr. Vawser, there were some general questions that we directed to the jury. The Court has already asked you about the ones he directed. Now, did you hear the questfol. 117] tions that I asked whether or not any member of the jury in the box had ever been involved in a criminal matter in any way, either the victim or as a witness!

A. I heard you.

Q. What is your answer to that, sir?

A. No.

Q. Nothing at all in your background that you recall?

A. No, sir.

Q. All right. And do you know any of the witnesses from

the list that the Court read or the list that I read? Do you know them personally?

A. No, not personally.

Q. You heard of some of them?

A. Just heard the name, you might say, that is all.

Q. Do you carry any prejudice in your mind on any of those people?

A. No, I don't.

Q. And you heard the list of attorneys that are associated in one way or another with Mr. Burdell and do you know any of those personally?

A. No.

Q. Do you know Mr. Carroll, the prosecuting attorney, seated at the left?

A. No, I have heard his name.

Q. Do you know any of his deputies, Mr. Smith or myself or any of the other deputies working for Mr. Carroll?

A. No.

Q. You haven't had any occasion to come in contact with the prosecuting attorney's office for any reason?

A. No, I haven't, sir.

[fol. 118] Q: Now, are you married, Mr. Vawser!

A. Yes, sir.

Q. And is your wife employed?

A. No.

Q. What kind of work do you do?

A. I work for King County Housing, White Center Heights.

Q. King County Housing?

A. Yes, sir.

Q. And what kind of work do you do for them?

A. Well, I will put it this way, I just do light work around, hanging shades and we make—

Q. Maintenance work, is that right?

A. Light maintenance work.

Q. How long have you been employed at that?

A. Well, I started with them in 45 but I lost fourteen months on account of heart trouble; you see, I had had heart trouble in 34.

Q. Is your health all right, sir?

A. I have just got to watch my diet and just take it fairly easy. As far as getting out and walking up a hill, that is out of the question.

Q. This is your second or fourth week on jury duty?

A. Fourth week.

Q. Is there any reason that you feel you could not serve on a jury in a case like this; healthwise, that is being held together for a week or ten days or more?

A. No, I don't know as there would be.

Q. Is there any medication that you require?

A. Well, I take pills right along, every day, as far as that goes.

[fol. 119] Q. For your heart condition?

A. Well, I have some for my heart and some for nerves.

Q. Now, do you feel that it would be difficult for you to serve on this case or will you be all right physically?

A. Well, I will put it this way. It is really hard to tell, sir, there because as far as that goes, I have felt pretty good up until a week or two ago and then I really had a spell of it and I went down and had a cardiogram because I felt pains in my chest. It just was from hanging window shades for three days. I held my arms up and that is what gives me the pains.

Q. Do you feel this might be a hardship on you being held together for a number of hours sitting each day and

being held together at night?

A. Well, at night it would be because I require quite a little rest, evenings that way.

Mr. Regal: I think, Your Honor, Mr. Vawser should be excused.

The Court: You may be excused. The Clerk will call another juror.

The Clerk: Calvin P. Wallace, W-a-l-l-a-c-e, 316 30th Avenue.

[fol. 120] Calvin P. Wallace, 316 30th Ave. (whereupon, promising to true answer make to questions propounded to him touching upon his qualifications to act as juror, was duly sworn).

Voir dire examination.

By the Court:

Q. Mr. Wallace, were you in court and sworn with the rest of the jurors today?

A. Yes, sir.

Q. Did you hear the Court's general short explanation of the case and the introduction of the parties and their counself

A. Yes, sir.

Q. Did you hear and understand the questions that the Court asked the jurors in the box?

A. Yes, sir.

Q. Would the answers to any of those questions that the Court asked, would you have raised your hand?

A. Yes, sir.

Q. Which one!

A. The first one.

Q. That you had heard of this case before?

A. Yes, sir.

Q. Any of the other questions?

A. No, sir.

Q. Is there anything about the nature of this case or any reason whatsoever why you cannot try this case impartially?

A. No, sir.

[fol. 121] The Court: Gentlemen, you may inquire.

Voir dire examination.

By Mr. Regal:

- Q. Mr. Wallace, what is your business, sir!
- A. Aircraft engineer.
- Q. Aircraft engineer!

A. Yes, sir.

Q. And are you married, sirf

A. Yes, sir.

Q. Is your wife employed?

A. No, sir.

Q. Has she ever been employed?

A. Yes, sir.

Q. What kind of work has she done?

A. Telephone operator.

Q. And how long was she employed at that?

A. Oh, about two years.

Q. Do you have any children?

A. Yes, sir.

Q. How many children?

A. One.

Q. How old?

A. Four months.

Q. You are an aircraft engineer for what company?

A. Boeing's.

Q. How long have you been there?

A. Nine years.

Q. Is Seattle, Washington your home city?

A. No, sir.

[fol. 122] Q. Where were you born, sir?

A. Bethlehem, Pennsylvania.

Q. Is Pennsylvania and Washington the two states you have lived in or have you lived elsewhere?

A. Those are the only two states.

Q. When did you come out here?

A. 1948.

Q. 381

A. '48.

Q. '48, and were you in the service!

A. No, sir.

Q. Did you work at something else back in Pennsylvania?

A. I did a little construction work.

Q. Did you ever belong to any union?

A. No, sir.

Q. In their aircraft engineering at Boeing, that is not union, is it?

A. No, sir.

Q. Where were you educated-in Pennsylvania?

A. Yes, sir.

Q. What schooling have you had?

A. Oh, Pennsylvania State University.

Q. What degree did you take from there, or did you?

A. Yes.

Q. What degree, sir!

A. Engineering.

Q. Civil or what kind.

A. Civil.

Q. Civil. When did you graduate?

A. 1948.

[fol. 123] Q. '481

A. Yes, sir.

Q. Now I asked a general question of the jurors as to whether or not any member of their family, any close friend or relative, had ever been involved in any way in a criminal matter. Would your answer be the same on that—

A. Yes.

Q. There is nothing at all in your recollection where you have been victimized or you have been a witness or anything of that kind?

A. No, sir.

Q. And do you know Mr. Burdell or any of his associates, either in this case or in his office?

A. No, sir.

Q. You know none of the attorneys?

A. No, sir.

Q. Do you know Mr. Carroll or any of his deputies?

A. No. sir.

Q. Do you know any of the witnesses that we have read their names off, personally that is?

A. No. sir.

Q. Have you heard of some of them!

A. I have heard of some of them.

Q. Have you any prejudice against any of those that you have heard of?

A. No, sir.

Q. You would not accept the testimony of those witnesses any more readily than you would any other person's testi-

mony and on the other hand you would not discredit it. [fol. 124] any more readily, would you?

A. No, sir.

Q. Your feeling is sort of neutral as far as they are concerned?

A. That's right.

Mr. Regal: Pass Mr. Wallace for cause, Your Honor.

The Court: Excuse me, Mr. Burdell, it is one minute to 4:00. It is time for the evening recess. Ladies and gentlemen of the jury, those in the box and those remaining in the courtroom, I repeat my instructions to you with respect to conversing among yourselves or with any other person with respect to any other matter connected with this particular case, directly or indirectly, with the exception that you may be permitted to make preliminary arrangements in the event that you may be selected for service on this jury. If in those preliminary arrangements you will be making it will be necessary to mention this case, you may do so. The extent of time, as I have repeated before, the Court is unable to say, but it is within reasonable limits. Other than that I advise you and instruct you not to read. hear or listen or talk about this matter with any person or amongst yourselves until you have been excused from the case entirely.

You may now be excused for the evening recess to return in time for court session at 9:30 tomorrow morning.

(Jury leaves jury box.)

The Court: Court now stands adjourned until 9:30 A.M., tomorrow.

(Court adjourned to 9:30 a.m.)

Morning Session

December 3, 1957 9:30 o'clock A. M.

All parties present.

(The following occurred in Chambers.)

Mr. Burdell: Can I put this on the record?

The Court: You may.

Mr. Burdell: I would like to request the Court to ask the general question of the jurors this morning whether or not any of them read newspaper reports concerning this case overnight or heard radio or television reports and if any of them indicate that they did, including those that have been passed, I would like an opportunity to ask one or two questions or perhaps more concerning what they read and whether or not it had any effect. Then in addition, there is one general question that probably should have been asked yesterday. That I could ask individually as I go along but I think it would save time if the Court would ask it generally or permit me to do so and this I think is a question which probably should be asked of the two that have been passed for cause even though I did pass them for cause, because there may be some problem. There was a case which we referred to in the Beck, Jr. case, the case here several weeks ago in which two or three union members brought suit against a George Cavano who is the secretary-treasurer of Local 174, and it was a slander [fol. 126] suit, I guess, sued him for calling him a Communist and I think we should be sure no jurors served on that case.

The Court: Your position on both of those questions, Mr. Regal?

Mr. Regal: I have no objection on either one of them,

Your Honor.

The Court: I will ask the first one, Mr. Burdell, and ask that you would ask the second one as a general question.

Mr. Burdell: I will, yes. Then I have one further suggestion. I noticed that Mrs. Marshall is in the courtroom and I wonder if it would not be appropriate for the Court to talk to Mrs. Marshall and I would suggest the Court doing it in my absence and Mr. Regal's absence or in our presence, either way, but I think the Court should probably ask her, advise her that she should not discuss this case or the previous case with any one of the prospective juros during recess.

Mr. Regal: I would rather have the Bailiff do that. I think it would be very embarrassing to her. I have talked to her and, you know, just discussed things with her and talked to her generally about nothing particular and asked her to be sure not to discuss this case with anybody while she has been in the courtroom. She already has been admonished as far as I am concerned, but I would like to have the Bailiff do it, if Charlie has no objection to it.

Mr. Burdell: I don't have any objection to anyone doing it, I just think it should be done in such a manner that we can be reasonably sure that she is going to comply with

[fol. 127] it.

Mr. Regal: You and I could do it. We could tell her to be sure not to say anything to anybody and not to discuss the other case and so on.

Mr. Burdell: Well, I think-

The Court: She apparently spoke to the Bailiff last night. I was sitting in here and saw her up there. She had been confined—they had the relationship of knowing each other and I think that it would not be embarrassing for me to tell her that. I will do it. It is better coming

from the Court. That will be granted.

Mr. Burdell: I have one further thing with respect to Juror No. 3. I have the feeling that perhaps some of the answers that that juror gave to some of my questions were inaccurate. I don't have any questions which I want to ask of him at this point which would lead me now to interpose any challenge or withdraw my passing him for cause, but I would like to ask him what year it was that he left the Crescent Manufacturing Company. Now, that question may have been asked directly and if it is-

Mr. Regal: That is Juror No. 4.

Mr. Burdell: Yes, Mr. Kraatz, No. 4.

The Court: What year he left?

Mr. Burdell: The Crescent Manufacturing Company.

The Court: Anything else!

Mr. Burdell: That is the only request.

Mr. Regal: I have no objection to any of those requests,

Your Honor.

[fol. 128] The Court: That will be granted. Anything else, gentlemen †

Mr. Burdell: Nothing from me.

The Court: The Bailiff has indicated that one of the jurors, Mrs. Cooke, wanted to talk to me in Chambers. I will have the Court Reporter remain for this discussion.

(The attorneys left Chambers. Mrs. Cooke was questioned by the Court as follows:)

Q. How do you do! A. I appreciate this.

Q. This lady is taking this down.

A. It is embarrassing to say that I am in the early stages of being pregnant and yesterday after all the excitement I had a little trouble, and under the circumstances I wonder if I could not be excused. I did not think it would bother me, but apparently the strain was more than I thought.

Q. Well, it is a nervous situation, but I think you are

wise to advise me of it because if there is no reason-

A. Well, I didn't want-

Q. -to trouble you this way.

A. -I didn't want to get away from my civic duties, I didn't think it would make any difference. Apparently it

did to my sister more than it did me.

Q. I will go out and I will make a general remark that you have talked to me in Chambers for the record and I have for personal reasons, which you expressed to me, decided it seems wise to excuse you and that is all.

A. All right, thank you very much, sir.

[fol. 129] (The following occurred in open court in the presence of the jury:)

The Court: Prior to court session this morning, with consent of Counsel obtained in Chambers, the Court honored the request of Mrs. Cooke to explain to the Court some personal health reasons for inability to serve as a juror and the Court did make a record of same, heard the reasons and does consider them sufficient. The Court will now excuse Mrs. Cooke. Thank you for your attendance. The Clerk will please call another juror for Mrs. Cooke's position, No. 2.

The Clerk: Eleanor J. Eaken, 320 Western Avenue,

Auburn.

The Court: Ladies and gentlemen of the jury, the Court would like to ask you one general question for you to answer by raising your hands and this is the question, whether or not any of you inadvertently or otherwise over the night recess discussed the matter with anyone or anyone discussed it with you inadvertently, read any newspapers, heard the T. V. or radio with respect to this case or matters connected with this case. If so, please raise your hand? That is 4, 6, 7, 9, 10, 11. Now, I would like to ask you with respect to that matter, how many of you only discussed the matter with reference to the exception the Court made in its instructions concerning making arrangements for you if you possibly were selected on this jury to be confined. Will you please raise your hand? No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11. One further [fol. 130] question on that same matter, from what has occurred over the recess overnight, has there been anything in connection with what you heard or said to you, or read that has left an impression in your mind this morning that would in any way change the answers to the questions made yesterday? Is there any reason now present why you could not try this case impartially?

Mr. Regal: Your Honor, may the record indicate there

was no response to either question.

The Court: Correct, there was no response. Mr. Burdell, you have a question to ask, one general question of the panel, concerning a previous suit. Will you pose it at this time, please?

Mr. Burdell: Yes, Your Honor, I will. Thank you Ladies and gentlemen, some weeks ago, I think during your term of service, there was a civil suit in this court,

not in this room, not in this courtroom, but in the courthouse, in which some members of one of the Teamsters' Union sued a Teamster official for, I think it was, a suit for slander and the allegation was that the Teamster official had referred to the plaintiff as Communist, and I would like to know if any one of you served on that case or were called as prospective jurors on that case. If you were or if you did, will you please raise your hand?

The Court: No hands were raised. Is it Miss or Mrs.

Eaken f

The Juror: Mrs.

The Court: Were you in court yesterday and sworn with the rest of the jurors, Mrs. Eaken?

[fol. 131] The Juror: Yes, I was.

The Court: Did you hear the Court's reading of the indictment and the general explanation of the case?

The Juror: Yes, I did.

The Court: And introduction of the parties and Counsel?

The Juror: Yes.

The Court: Did you hear and understand and now remember the questions that the Court asked the jury and that is the Court—

The Juror: Yes, I believe I do.

The Court: Would you have answered any of those questions by raising your hand?

The Juror: Yes, the first one.

The Court: As to having heard of the case before?

The Juror: Yes.

The Court: Any of the other questions? The Juror: Not that I remember, no.

The Court: Is there any reason according to the nature of this case, the kind of case it is, why you could not start into the trial without any bias or prejudice?

The Juror: No, sir, no.

The Court: Do you know of any reasons from all that you have heard here in the courtroom so far why you could not serve as a fair and impartial juror?

The Juror: No, sir, I would judge the merits of the

case.

Mr. Regal: I did not hear the answer to the last ques-[fol. 132] tion.

The Court: Repeat it, Miss Reporter.

The Reporter: "No, sir, I would judge the merits of the case."

The Court: Mr. Burdell, if you wish at this time you may examine the Jurors 1, 2, 3, if they answered in response to the first question this morning concerning reading and the matters between last night's recess and this morning.

Mr. Burdell: Your Honor, my record or my notes may be incorrect, but they do not show that those were the jurors who answered that question in the affirmative. Would the Court mind asking the question again?

The Court: I was including in my remarks just now all jurors and I relied on you to keep track of the ones that answered the question. I am sure you have it right and you may ask it. I did not imply that the numbers I gave—

Mr. Burdell: I understand that and the first one I have indicated as having read or heard something inadvertently over the night was Mr. Kraatz. Am I right? Did you an-

swer that in the affirmative, Mr. Kraatz?

The Juror: Yes, sir.

Mr. Burdell: And may I ask if that was a radio or television broadcast or—

The Juror: It was television.

Mr. Burdell: You read no newspaper articles about it! The Juror: No.

Mr. Burdell: I just have one question of you, Mr. Kraatz, [fol. 133] then, which is along the lines I discussed this morning.

The Court: You may pose it.

Mr. Burdell: I would like to ask you when it was that you left Crescent Manufacturing Company. I did not get that in my notes.

The Juror: 1950.

Mr. Burdell: In 1950† All right. Thank you. Now, I have an indication here that Mr. Vukich—

The Juror: Yes, that's right.

Mr. Burdell: Were you one of those that indicated you had read or heard some report about the case?

The Juror: Yes.

Mr. Burdell: Was that newspaper, television or radio?

The Juror: Television.

Mr. Burdell: Did you have any discussion of any sort with anyone about it aside from that and aside from the discussion which the Court indicated you should probably make in connection with arranging for staying overnight?

The Juror: No, no other discussions, no.

Mr. Regal: Your Honor, I suggest Mr. Burdell could continue.

Mr. Burdell: I think that's right. Just to be sure, Mrs. Degering, you are not one of those that indicated you had heard or read anything about the case?

The Juror: No, I just mentioned to my husband I did

not know how it would be about staying overnight.

[fol. 134] Mr. Burdell: How about you, Mr. Ryan?

The Juror: I didn't even read the newspaper last night.

Mr. Burdell: All right, thank you. I think I can get
to the others later.

The Court: Yes.

[fol. 135]

Morning Session

December 5, 1957 9:30 o'clock A. M.

The Court: We will now resume examination of Mr. Wallace specifically as to qualifications on the jury by Mr. Burdell.

Voir dire/examination.

By Mr. Burdell:

Q. Mr. Wallace, did you come out here from—you attended school at Penn State, did you say?

A. Yes.

Q. Lafayette, Pennsylvania? Or someplace-

A. State College of Pennsylvania.

Q. State College. Did you come out here in 1948 just as soon as you finished—got your degree?

A. Yes.

Q. And went to work for Boeing right away?

A. Yes, I did.

Q. Now, Mr. Wallace, have you heard or seen television reports concerning the McClellan Committee hearing which took place last summer in Washington?

A. I heard about them, yes.

Q. Did you observe or see any of them?

A. No, I didn't.

Q. Have you had any discussion, Mr. Wallace, with any of your fellow employees or friends or relatives during the course of which any hostile statements were made towards [fol. 136] Mr. Beck?

A. No, sir.

- Q. You had no such discussion or heard no such discussion?
 - A. I heard some discussions.
 - Q. And where did those take place?

A. A long time ago.

Q. You don't remember where they took place? Were they discussions with friends or with relatives?

A. Well, they were discussions that I participated in.

Just discussions I heard other people talking about.

Q. And you are quite sure, to the best of your recollection, you don't recall having participated in any such discussion yourself?

A. No, sir.

Q. What about newspaper reports? Have you read a number of newspaper reports or magazine reports concerning charges or assertions made against Mr. Beck!

A. I have.

Q. And that would include magazine reports?

A. Yes, sir.

Q. Can you recall what magazine reports or what magazine specifically?

A. Time Magazine.

Q. Do you read Time Magazine regularly?

A. Yes, sir.

Q. And have you read any reports concerning the case which took place here some few days ago involving Mr. Beck's son, Mr. Beck, Jr.?

施

A. I think I read the results of the case in the news-

papers.

The Court: Just a little louder, please.

[fol. 137] The Juror: I read the results of the case in the newspaper.

The Court: Thank you.

Q. Now, Mr. Wallace, do you have any understanding or feeling in that case, that is the case involving Mr. Beck's son, as connected with this case in any manner which would affect your consideration in this particular case, the one we have now?

A. No, sir.

Q. Your understanding is that there is no connection between the two cases? Is that what your understanding is?

A. Yes, that's right.

Q. As I understand it, you don't belong to any union at Boeing's, is that correct?

A. That's correct.

Q. How long have you been on the jury, Mr. Wallace

A. This is my second week.

Q. And before you began to serve on the jury, did you receive any instructions of any sort from anyone at Boeing's concerning your jury service or how it should be conducted or what your duties as a juror should be?

A. No, sir.

Q. In connection with these articles that you have read in Time Magazine, Mr. Wallace, have you regarded some of them or any of them as indicating a resentment or prejudice or bias toward Mr. Beck?

A. No, sir.

Q. You mean you understand or you interpreted those articles as being—as not including any hostile statements [fol. 138] toward Mr. Beck?

A. I don't recall right now.

Q. Well, do you think anything that you have read, newspapers or magazines, would be or could be interpreted

by you as a hostile or prejudicial or biased statement toward Mr. Beck or a statement indicating some alleged misconduct or claim of misconduct on his part?

A. No, sir.

Q. None of the articles that you read had any such indication to your mind, is that right?

A. I don't recall them, sir.

[fol. 139] Q. Don't you recall the content or the subject matter or what was said in any of the articles which you read?

A. Well, it has been some time ago.

Q. I take it you don't read—did you say you read Time Magazine regularly?

A. Yes, I do.

Q. And do you read the news reports in it?— In that magazine?

A. Well, I sometimes do-but sometimes I don't. Just-

Q. You usually start at the back at the movie section!

A. Yes.

Q. But as far as you can recall then, of all the things you have read, as I understand it, you don't recall any statement having been made asserting that Mr. Beck had allegedly committed any wrongful act, is that a correct statement?

A. That's correct.

Mr. Burdell: I will pass the juror for cause.

[fol. 140] The Court: The prosecution Counsel may ex-

amine specifically Mrs. Eaken, No. 2.

Mr. Regal: Well, Your Honor, may I ask the same question that I asked generally of the jurors who were in the back at the outset?

The Court: Yes.

Mr. Regal: Regarding a couple of matters.

By Mr. Regal:

Q. Mrs. Eaken, have you or any member of your family or any close friend ever been involved in any way in a criminal case?

A. No.

Q. Do you know any Counsel here or any of their associates either prosecution or defense?

A. No.

Q. And I will ask, did you hear my general questions, and would your answers be the same?

A. Right.

Q. Now, are you employed, Mrs. Eaken!

A. No, I'm not.

Q. Have you ever been employed?

A. Yes, for a short time during the war I worked for the Office of Postal Censorship here in Seattle.

Q. That is a Federal organization?

A. Yes.

Q. And there was no labor union connected with that?

A. No.

- Q. What does your husband do?
- A. He is a manufacturer's representative.

Q. What company?

[fol. 141] A. Riteway Manufacturing Company.

Q. What do they make?

A. Stoves.

Q. Stoves!

A. Yes.

Q. How long has he been with that company?

A. This particular company, a year.

Q. How long has he been in the manufacturing representative business?

A. About eight years.

Q. And what did he do before that?

A. Before that he managed—he has had several managerial jobs managed Superior Motor Freight for about a year.

Q. How long ago was that?

A. About nine years ago and then previous to that, about three years before that I would say, he managed System Motors.

Q. A transfer business?

B

A. In Tacoma. And then they were bought out by West Coast and he continued there for two or three years and prior to that he was a line haul driver between Sumner and Portland for five years and he drove between Seattle and Los Angeles. I would say about ten years previous to this work he was a Teamster and worked-

Q. While he was manager of these various-

A. —freight companies.

Q. —freight companies, was he a Teamster then, too!

A. I don't remember.

Q. But he was a Teamster for a period of time around eight or ten years ago? [fol. 142] A. Yes.

Q. Have you had discussions with him regarding your

service on this jury?

A. I just told him-I checked to see if it would be all right.

Q. Have you ever had any discussion regarding this case or the defendant?

"A. It hasn't been of any real interest to me.

Q. And it hasn't been to him, as far as you know?

A. No.

Q. Made any remarks to you that would tend to influence you here one way or the other?

A. No.

Q. He has not been a member of any union now in this business he is in?

A. No.

Q. During the time that he was a Teamster, were you married to him then?

A. Yes.

Q. And did anything occur during that period of time with his relationship with the union that would tend to upset you or influence you at all?

A. No.

Q. Do you have a good recollection of that period of timet

A. Yes.

Q. What I am driving at is, during the middle of the trial I don't want you to all of a sudden remember something that will influence you.

A. No.

Q. And if you do remember something you will be able [fol. 143] to put it out of your mind and base your judgment entirely on the evidence from this witness stand?

A. That's right.

Q. Now, do you have any children?

A. Yes, I have a boy 17 and a boy 11.

Q. And the boy 17 is in school?

A. He is a senior in high school.

Q. Does he do any work?

A. Yes.

Q. What kind of work does he do?

A. He is an apprentice to an upholsterer. He does car upholstering.

Q. Does he belong to a union?

A. No.

Q. And a boy 11, too!

A. Yes.

Q. Were you born in this part of the country?

A. I was born in the same town I am living in.

Q. How about Mr. Eaken?

A. He was born in Kansas City, Missouri, I believe, or Kansas City, Kansas, I am not sure.

Q. He came out here?

A. About nine, when he was about nine, to the West.

Q. He is a native, too, of this city?

A. Yes.

Q. And was he in the Service?

A. No.

Q. You served on jury duty before, Mrs. Eaken?

A. Yes.

Q. This is your second week?

[fol. 144] A. Third week-fourth week.

Q. Have you served on a jury trying a criminal case?

A. No.

Q. This is the first criminal case that you have been called on?

A. Yes.

Mr. Regal: Pass Mrs. Eaken for cause, Your Honor.

By Mr. Burdell:

Q. Mrs. Eaken, will you tell me what your husband's first name is?

A. Glen, one N.

Q. And as I understand it, during the period when he was working for System Transfer, he was in a managerial and superintendent capacity?

A. Yes.

Q. Do you know whether or not during that period of time he handled any collective bargaining agreement or did negotiating for any of the employees of that company!

A. I would not know that, sir. If there was, there apparently was nothing in my mind about it to indicate

it.

Q. Where did he work just before he became the manufacturer's representative, was it at System then, or did I miss something?

A. He was a salesman for Packard Bell just previous to

that.

Q. I just want to be sure of this, he had no reason for leaving the trucking industry which in any way was connected with labor?

[fol. 145] A. Oh, no, no.

Q. Now, I heard you say that you would judge the case or judge this case on the merits of the case. I sort of gathered by that that you have heard other things about either Mr. Beck or about the case which you feel you will have to put aside in order to decide this case on its

merits. Am I correct about that?

A. No, I wouldn't say that. I have never been particularly interested in just reading news of this type of thing and I have heard you question the other jurors as to watching the T. V. when this previous thing was on the air, and I wasn't the least bit interested and never turned that on. I don't have my T. V. on in the afternoons and I just haven't been—I would say truly that I know nothing about this.

Q. All right. Let me ask you one more question, then. Do you recall whether or not when your husband was a member of the Teamsters' Union he attended meetings, whether he was an active member in anything?

A. I don't remember that, no. I wouldn't think that he

was. I wouldn't think that he was.

Q. You don't recall his attending meetings frequently!
A. No.

Mr. Burdell: Pass this juror.

The Court: The State may examine Mr. Vukich.

By Mr. Regal:

Q. Mr. Vukich,-

A. Yes, sir.

Q. What is your employment?

A. Associated with Seattle-First National Bank.

[fol. 146] Q. You would know Mr. Lake?

A. Yes, sir.

Q. And Mr. Hepper?

A. Yes, sir.

Q. What is your work with Seattle-First National Bank?

A. I am the manager of the installment loan department, University Branch.

· Q. How long have you been with the bank?

A. Seven and a half years.

Q. And what work did you do before that?

A. I worked for approximately nine months with the Commercial Investment Trust.

Q. And prior to that, sir?

A. I was in school.

Q. University of Washington?

A. University of Idaho.

Q. And did you take a degree from that university?

A. No, sir.

Q. What course did you take?

A. Merchandising and advertising.

Q. And how far through school did you go, how many years?

A. I took four and a half years of college.

Q. Mr. Vukich, the fact that you know of Mr. Lake and —have you ever met him?

A. No, sir.

Q. But you do know Mr. Hepper, one of the witnesses that I listed here?

A. Yes, I do.

Q. Know him personally?

A. Yes, on a social basis, bowling team.

[fol. 147] Q. Would you be more apt to accept his testimony, although I don't know whether it is going to be controverted at all, more readily than you would any other witness merely because of your frequent association with him?

A. Oh, I don't think I have any doubt as to the relia-

bility of it, knowing the man's position.

Q. Do you feel the same about Mr. Lake?

A. Yes, sir.

Q. Would you feel the same about any witness who has equal responsibility in an organization that is equally well known?

A. Yes, I believe so.

Q. In other words, you would balance it and if there was some discrepancy in witnesses of equal position and equal types of business, then you would have to as a juror decide which of them were more accurate in their testimony?

A. Yes.

Q. So my original question, you would not give Mr. Lake any more weight, you would not give more weight to Mr. Lake's testimony than any comptroller of any bank of a like nature in this area or any other area?

A. That's right.

Q. And you would not give Mr. Hepper's testimony any greater weight than you would people in like positions in like organizations, would you?

A. That's right.

Q. In other words, when you say what you do, you assume because of their position in society and position in the community that they are probably reliable?

[fol. 148] A. That's right.

Q. Now, are you married, Mr. Vukich?

A. Yes, I am.

Q. Does your wife work?

A. Part-time.

Q. What does she do?

A. She is an instructor for Cooperative Play Group, instructing small children prior to kindergarten.

Q. Sort of a preschool?

A. Right.

Q. Where is that located?

A. Richmond Beach.

Q. Is there a name of the school?

A. Actually it is just a meeting that takes place in the basement of a church out there, a bunch of the mothers got together and organized the group.

Q. Sort of teaching the kids to get along with one an-

other?

A. That's right.

Q. Before they go to school? How long has she been doing that?

A. Approximately two years.

Q. Has she worked any place else before?

A. She worked for a short period of time back in 1950 for an advertising firm.

Q. What kind of work did she do there?

A. It was office work.

Q. Did she belong to a labor union at that time?

A. No, sir.

Q. In your banking work you don't belong to a labor union?

A. No.

[fol. 149] Q. And have you ever?

- A. I think I have in the past, but it's been several years ago, I think shortly before Pearl Harbor or—I was working for a shippard here and I think I had a temporary permit in regard to my work as an electrician helper in the shippard.
- Q. But your recollection is weak enough that in the case you weren't a regular—

A. I did not attend meetings or anything of that nature.

Q. And is this your home city?

A. No, I was born and raised in Spokane.

Q. And is Spokane the only other city that you have lived in other than Seattle for any period of time?

A. Except during my service.

Q. Yes, and your wife, was she born in this area?

A. No, she was born in Idaho.

Q. Is this her second place of residence, or has she lived elsewhere that you know of?

A. She has lived in Utah and other than that, I don't recall any other state she has lived in.

Q. Have you served on a jury trying a criminal case

beforef

A. No, I have not.

Q. And you have served on civil cases?

A. Yes, sir.

Q. This is our second or fourth week?

A. This is my fourth week.

Mr. Regal: Pass Mr. Vukich for cause, Your Honor.

[fol. 150] By Mr. Burdell:

Q. Mr. Vukich, just a question or two about your relationship with Mr. Lake and Mr. Hepper. I understand that you feel that because of their position in the bank you would feel that their testimony was, let's say, presumptively reliable, is that about what your feeling is?

A. That's right.

Q. Well, would you say—this is your fourth week!

A. Yes, sir, this is my fourth week.

Q. You wouldn't have a feeling that because they were called by the State in this case, that is as a State's witness, that by virtue of that fact these men who you feel to be reliable or representative of your bank, are thereby—you wouldn't have any feeling about the case one way or another, you wouldn't be under that impression, would you!

A. No, I think I can keep it in its proper perspective

as far as their testimony is concerned.

Q. I am not sure I made myself clear; would you understand that when they were testifying they were probably testifying pursuant to subpoena and whether or not they were called by the State or by the defense, that in itself would not indicate that they had any feeling in favor of the State, if they testified for the State, or the defense if they testified for the defense. Do you understand what I mean?

A. Yes.

Q. And I guess your answer is that that would not affect you?

[fol. 151] A. That's right, sir.

Q. In other words, if they were subpoensed you would give reliability to their testimony whether or not they testified for the State or for the defendant, either way?

A. That's right.

Q. And because they happen to testify for the State, you would not let that lead you to believe that they wanted the State to win the case?

A. No, sir.

Q. Now, I assume or I understand that you heard expressions of opinion about this case?

A. Yes, sir, in a general conversation.

- Q. Were those expressions made, were they part of discussions at your work or with friends or with relatives or where?
 - A. It was intermixed; part of it was at work and part—

The Court: A little louder, please, sir.

A. It was intermixed; I heard discussions at work and

in social conversations among our friends.

Q. Now, let's take discussions at work. Did those discussions include statements of a hostile nature toward Mr. Beck or statements resenting him in some way?

A. Oh, I believe there were some indifferent attitudes in

some of those discussions.

Q. When you say "indifferent", do you mean there were some hostile—

A. Yes, sir.

Q. Were there any of a favorable context?

A. Yes.

Q. Did you participate in any of these discussions either [fol. 152] at work or among your friends?

A. In a limited nature, I believe, in the discussions-

Q. What were the nature of your expressions? Were they, insofar as they might bear on your present state of mind toward Mr. Beck?

A. I think they were of a rather neutral nature. I mean, I did not express myself one way or the other about it.

Q. That would be true either at work or among your

friends or relatives?

A. Yes, sir, because during the course of most of them I was serving on jury service and I feel it improper to express an opinion.

Q. Now, I assume, Mr. Vukich, that you—I would think you indicated in your answers to the general questions, I guess perhaps it wasn't asked you, but I assume you did to a certain degree follow the proceedings of the McClellan Committee which took place last summer?

A. Yes, sir, I did.

Q. And did you watch it on television?

A. A portion of it.

Q. And did you observe the hearing on the date upon which Mr. Beck appeared?

A. Yes, I did.

Q. And now, what impression or opinion do you have at the present time concerning the exercise by Mr. Beck of his privilege of invoking the Fifth Amendment of the Constitution?

A. Well, at the present time I feel that it was his privilege, although at the time I had more or less an indif-

ferent attitude towards it.

[fol. 153] Q. I sort of gathered when you sav—used the word "indifferent," you mean a feeling of impropriety or feeling that it was improper?

A. We will say unhelpful, perhaps more could have been

accomplished if he had not taken his privilege.

Q. And now at the present time, what is your attitude about it?

A. Well, I feel at the present time that he was acting upon the advice of his counsel in the circumstances, and did what he did—

Q. Now, in view of the fact he was acting upon the advice of his Counsel, do you feel in any way that the exercise of that privilege in any degree was an indication by himself or by his Counsel at that time of any guilt on his part?

A. Well, I didn't feel that he was on trial during the time, it was just more or less a committee taken to study certain problems. I did not feel he was on trial and they were looking for some answers and it was his prerogative

if he did not want to answer them.

Q. But insofar as his refusal to testify might affect a trial, a situation in which he is on trial, do you have any feeling at all in your mind concerning the effect upon you

of the fact that he asserted his constitutional privilege last summer particularly insofar as whether or not you have an; seeling whatsoever that the assertion of that privilege might be an indication of his guilt in this case?

A. No, I feel in a case of this nature that a man is inno-

cent until proven guilty.

[fol. 154] Q. Did you say you had not served on any criminal cases before?

A. Yes, sir.

Q. What was your education, Mr. Vukich?

A. I attended the University of Idaho and the University of Washington.

Mr. Burdell: I will pass this juror.

[fol. 155] Fred T. Wood, 2360 East 125th (whereupon, promising to true answer make to questions propounded to him touching upon his qualifications to act as juror, was duly sworn).

Voir dire examination.

By Mr. Regal:

- Q. Is it Mr. Wood or Woods?
- A. Wood.
- Q. And your occupation, Mr. Wood?
- A. Boeing Airplane Company. Q. And what do you do there?
- A. Tool maker.
- Q. What kind of work?
- A. Tool maker.
- .Q. Tool maker?
- A. Tool maker and supervisor.
- Q. Tool maker and supervisor?
- A. Yes.
- Q. How long have you been at Boeing's ?
- A. Over fifteen years.
- Q. And you have been a tool maker for how long, sir?
- A. Ever since I have been there.

Q. What did you do before that?

A. I worked for Rock Island Pacific Railway. Rock Island and Pacific Railway Company.

Q. How long did you work for them?

A. Approximately ten years.

Q. And what work did you do for them?

A. Bridge builder.

Q. Bridget

[fol. 156] A. Bridge builder.

Q. Bridge builder!

A. Yes.

Q. What sort of work is a bridge builder? Is that heavy structural work?

A. Heavy structural work on bridges, steel bridges, wood bridges—

Q. And did you have work before that of some nature!

A. Well, only on the farm.

Q. On the farm?

A. Yes.

Q. And where was that, sir?

A. Oklahoma.

Q. Is Oklahoma your home state?

A. Yes.

Q. Where you were born?

A. No, I was born in New Mexico.

Q. And then moved to Oklahoma and worked on a farm. And where did you work for the Rock Island?

A. Southern Division.

Q. Where is that?

A. Dallas, Texas to Kansas, all branches in between.

Q. And are you married, Mr. Wood?

A. Yes.

Q. Do you have any children?

A. One.

Q. How old is the child?

A. Seventeen years old.

Q. Does he go to school here?

A. Yes.

[fol. 157] Q. Does he work?

A. Part time.

Q. I don't know if it is a boy or not but we started in talking about a boy?

A. A boy.

- Q. What kind of work does he do?
- A. He works for Ed Lynn Fiberglass, and also Fiber Lay.
- Q. And what kind of work is that! Warehouse work!

A. No. Fiber-fiberglass.

- Q. Oh. He installs it or helps install it?
- A. He helps install and also makes articles.
- Q. I see. And how long has he been with them? A short time?

A. Approximately a year.

Q. And does he belong to any union—labor union?

A. No.

Q. Have you ever belonged to a labor union?

A. Yes, on the railroad.

Q. Boeing Airplane!

A. Yes.

Q. Aeronautical Mechanics?

A. Right.

Q. And have you been a member of the Aeronautical Mechanics for fifteen years!

A. Not all the time.

Q. How long have you been a member of the union?

A. Approximately ten years.
Q. That takes us back to 1947?

A. At times when I am supervisor I don't belong to any union.

[fol. 158] Q. You are supervisor now?

A. As of today, no.

Q. Well, they do have a supervisors' union, don't they?

A. No.

Q. Oh, they don't?

A. No.

Q. And—but while you were a supervisor, you were a supervisor then about ten years ago?

A. Yes.

Q. During the war period?

- A. I was then and I was last week, up until last week.
 - Q. Well, have you terminated employment with Boeing?

A. No.

Q. Been cut down?

A. I've been cut back, effective yesterday.

Q. You are not saying that because you are on the jury, of course, you are not working today, you are here, but—

A. I was set back yesterday, officially yesterday.

Q. And that has not been because of your jury service, cut down on personnel out there?

A. Right, surplus of employees.

Q. And does your wife work, Mr. Wood?

A. No, she doesn't.

Q. Has she ever worked except around the house!

A. Except around the house is all.

Q. I understand that they claim that is work.

A. I believe they claim that.

Q. Especially when you have a lot of children. I am going to get real popular with the ladies. Now when you first started with Boeing fifteen years ago, did you belong [fol. 159] to the union then?

A. Yes.

Q. And then when you became supervisor you were out temporarily and then back as things changed?

A. Several different times.

Q. Yes, and when you were with the railroad company you were a member of the union at that time?

A. Yes.

Q. That was what union-what union was that?

A. Brotherhood of Railroad.

Q. And then did you have your own farm in Oklahoms! Was it a family farm?

A. Yes, my father's farm.

Q. How long have you lived in the Seattle area, Mr. Wood?

A. I came here in '39.

Q. And your wife, where was her home?

A. Oklahoma.

Q. Oklahoma too. Were you married in Oklahoma!

A. Yes.

Q. How old are you, Mr. Wood?

A. 49.

Q. And how far through school did you go?

A. Eighth grade.

Mr. Regal: Pass Mr. Wood for cause, Your Honor.

Voir dire examination.

By Mr. Burdell:

Q. Mr. Wood, when you were a member of the—I cannot remember the name of it, the Brotherhood of Railway, was the name of it the Brotherhood of Railway Operators or something?

[fol. 160] A. I cannot quote the exact name.

Q. How long were you a member of that union?

A. Oh, approximately ten years.

Q. Were you at all active as a member, did you attend meetings or anything of that sort?

A. No.

Q. Were you at all active in the union to which you belong now?

A. No.

Q. You never attended meetings or rarely attended meetings?

A. Rarely, very rarely.

Q. And was that because you were not interested or is that because you don't have time or is it because you are in a supervisory capacity most of the time, any of those reasons?

A. Yes, I don't wish to be involved.

Q. You mean you have some opposition to unions that leads you to say or believe you don't wish to be involved?

A. No, not necessarily. I have nothing against them,

if that's what you mean.

Q. Well, when you say you don't wish to be involved, can you tell me a little more about what you mean? You mean you just have no interest or—

A. I really don't have any interest, no.

Q. Then do you belong to the union there because you feel that you have to, is that it?

A. No, no, not exactly.

Q. Well, you say not exactly. I wonder if you could

explain it to me a little more, because I can't-

A. Well, let's say it this way. I believe in labor organiza-[fol. 161] tions. I think they are a good thing. I don't believe in all their ideas, but who does?

Q. Well, some day maybe you can ask me the questions. Now, Mr. Wood, you were at Boeing's in 1948, I take it! A. Right.

Q. Were you in a supervisory capacity at that time?

A. No, I was a tool maker at that time.

Q. You were a tool maker. Getting back to this union affiliation situation, as I understand it, you believe in the long run that unions accomplish something but there are some types about it or some things that you don't approve of or some methods or something of that sort?

A. Right.

Q. But although you don't approve of them, you haven't felt that you have the time or the capacity to go to the meetings and try to change it, is that it?

A. Right.

Q. There is nothing about unions, the union to which you belong, that would tempt you to go to it, that would prevent you from going to the meetings, and having some thing to say about it?

A. Not if I wanted to.

Q. Not if you wanted to. A. I just don't want to.

Q. Now in 1948, when you were a tool maker, were you aware of some differences between the Aeronautical Workers Union and the Teamsters' out there?

A. Yes.

Q. Did you have any participation at all in connection [fol. 162] with that dispute?

A. No.

Q. Were you out of work any as a result of it?

A. Yes.

Q. How long were you out of work?

A. Wasn't exactly out of work, I was out of work at Boeing's, however I worked all the way through-but not at Boeing's.

Q. I see, but you had to quit work at Boeing's and then you went to work someplace else during that period of time!

A. Yes.

Q. Can you tell us where it was that you worked during the-

A. Yes, I went to work as a carpenter under the Shinglers' Union.

Q. Under the what? A. Shinglers' Union.

Q. Is that a union affiliated with the American Federation of Labort

A. I believe so.

Q. And you had to have a union card of some sort?

A. I had one.

Q. Were you a regular member of that union or were * you working on some sort of permit?

A. No, I was a regular member.

Q. Are you still a member of that union?

A. No, not as of now.

Q. Now, what attitude do you have, if any, toward the Teamsters' Union and Mr. Beck, who was president of that -[fol. 163] union, resulting from this dispute which took place at Boeing's in 1948?

A. Well, I didn't agree with their idea, of course.

Q. You didn't agree with the idea of the Teamsters' Union or the Aeronautical Workers' Union or both or which?

A. I actually didn't agree with either one.

Q. And do you have or did you have at that time any feeling of resentment towards the Teamsters' Union because of the fact that you had to leave work there which-

A. I will have to say yes. At that time I did.

Q. Well, at least you recall having the resentment? A. Yes.

Q. And does the resentment still exist in your mind?

A. No, it is under the bridge as far as I am concerned.

Q. Has anything in particular happened to overcome the resentment which you had in 1948, I mean, what has changed your mind about it?

A. Oh, I felt it was a business proposition and business is business, whichever way it goes, and I just dropped it

Q. Well, of course,-how long was it that you were not at work there as a result of this situation? Can you recall?

A. I believe something like nine months, wasn't it, that we were out.

Q. About nine months you think?

A. I wasn't out of work, I went ahead and worked.

Q. Yes, I understand. We can't tell you when it was-

A. I was only guessing.

Q. Now you are pretty well satisfied, do you think, or [fol. 164] let's put it this way. Can I be satisfied that the resentment that you felt in 1948 has completely disappeared as far as this case is concerned?

A. Yes.

Q. Have you discussed this case with anyone, Mr. Wood, recently

A. Not in particular, no.

Q. Well, in general have you discussed it?

A. Oh, in general I have heard about it and things like that.

Q. And from whom have you heard about it? Friends or relatives or people on the job working with you?

A. Well, yes, friends, relatives, and people on the job.

Q. So then you have heard—well, relatives, would you be referring to your wife or to some other close relative!

A. Yes.

Q.And I take it then you have talked about it with your wife!

A. Yes.

Q. And was that since you have been on jury duty or was it before, or both?

A. Well, of course we made some plans about this.

Q. I am not referring to plans made last night; yes.

A. Naturally it wrapped around this particular case.

Q. Surely.

A. And that is all.

Q. Or that is all. But have you had—have you participated yourself in any discussion with your friends or relatives?

[fol. 165] A. No.

Q. I am not referring just to this case, but any discussion concerning Mr. Beck or the Teamsters' Union in which you have expressed a feeling of hostility or resentment!

A. No.

Q. None at all?

A. No.

Q. Well now, I am going back to 1948. I assume that during that period of time you probably expressed some?

A. It's possible, I don't remember whether I did or not. I didn't have—it wasn't concerning me one way or the other even then. I wasn't really concerned.

Q. Because you had the other job?

A. Well, yes. I didn't care which way it went.

Q. Do I understand—did you say you didn't care which way the dispute went?

A. That's right.

Q. So as far as you were concerned at that time, you would have been just as well satisfied if the Teamsters' Union had prevailed in that dispute that they had there?

A. As far as I was concerned personally.

Q. And it wouldn't have affected you economically or any way?

A. No.

Q. And as far as whatever you know about the Teamsters' Union, you would just as soon be a member of that union as the Aeronautical Union?

A. Yes.

[fol. 166] Q. And would that be true at the present time?

A. If I was working under that job that came under there.

Q. Under their jurisdiction?

A. Yes.

Q. Now I assume or I understand from what you said, Mr. Wood, that in these discussions that you have had there have been some statements of resentment or hostility made about Mr. Beck by someone?

A. Naturally.

Q. And what opinion did you form in your mind that you have at the present time as a result of discussions of that sort?

A. In regard to this case, none.

Q. What opinion did you form in your mind as a result of those conversations concerning Mr. Beck in general and his conduct, what you heard about his activities?

A. Well, I don't approve of things that he has done and

I do approve of things that he has done.

Q. Let me ask you this then. When you say that you approve of things which Mr. Beck has done, can I be sure that when you deliberate on this case you will keep in mind the good things you have heard about him?

A. Right.

Q. Just as well as the bad things?

A. Right.

Mr. Burdell: Pass this juror.

[fol. 167] By Mr. Regal:

Q. Mr. Arndt?

A. Yes, sir.

Q. Do you pronounce it that way, sir?

A. That is correct.

Q. Where are you employed?

A. I am a buyer at Boeing, purchasing.

Q. Mr. Ryan is in the same department as you?

A. No. I believe we are in different divisions.

I am in the Materiel Plant 2.

Q. How long have you been at Boeing's?

A. Six years and eight months.

Q. And what work did you do before that?

A. I was in advertising for myself about three and a half years.

Q. What was the name of the company?

A. I operated under my own name, just Roy J. Arndt, Creative Advertising.

Q. I see. Was that in Seattle?

A. Yes, sir.

Q. Three years?

A. About three and a half years.

Q. I see. What work did you do before that?

A. I was in the export and import business for three years, two and a half years.

Q. What did you export and import?

A. Well, mostly products to China.

Q. Was that in this area, too?

A. In Seattle, yes, sir.

Q. And prior to that?

[fol. 168] A. I served in the United States Marine Corps for a little over two years.

Q. What was your rank, sir?

A. I was a staff sergeant on recruiting duty.

Q. Was that in Seattle?

A. No, that was back in Ohio.

Q. And prior to that time?

A. I was with the Wright Patterson Air Force Base, Air Service Command, for about two years.

Q. In what capacity?

A. Clerical work.

Q. That was as a civilian employee?

A. Yes, sir.

Q. And prior to that?

A. I was a salesman with a company in the Detroit, . Michigan Burkhart Company.

Q. Selling what products?

A. They manufactured embossed and decorated book covers, imitation leather and fancy leather.

Q. Prior to that?

A. Prior to that I was in sales promotion work with Johns-Manville Corporation in Cincinnati, Ohio.

Q. How long were you with them?

A. Let's see, about three and a half years.

Q. And can we go further?

A. You are going back quite a ways.

Q. I know it.

A. I was with a manufacturer's agent in Cincinnati, George A. Springmeyer Company.

Q. You have a good memory.

- [fol. 169] A. As a salesman.
 - Q. And can we go back further now than that?
 A. Let's see, Rudolph Company in Cincinnati.
 - Q. Salesman?

A. Bookkeeper.

Q. Bookkeeper. And before that?

A. School.

Q. We got back to school. What school did you go to?

A. Two years in college.

Q. What college?

A. Concordia College, North Carolina and Central College, Indiana, one year.

Q. What is your home state, sir!

A. I was born in Kansas City, Missouri.

Q. And you have lived in numerous states then during your lifetime?

A. Yes, I have.

Q. When did you come to the Seattle area?

A. December, 1945 and after leaving the Marine Corps.

Q. Yes, and you are married?

A. Yes, sir.

Q. Do you have children?

A. One daughter 23.

Q. And what kind of work does she do?

A. She is employed by Mercury Records in New York City, since graduation from college.

Q. And she has been on that work all the time since she

got out of college?

A. Since last fall.

Q. And is she married?

[fol. 170] A. No. sir.

Q. Not yet, anyway!

A. I don't think so.

Q. Now, is your wife employed?

A. No, sir.

Q. Has she ever been employed?

A. Yes, sir.

Q. While you were married to her?

A. Yes, sir.

Q. What kind of work has she done?

A. Secretarial.

Q. All secretarial work?

A. Yes.

Q. Have you ever belonged to any labor union in these various occupations?

A. No, sir.

Q. Has your wife?

A. No, sir.

Q. Has your daughter, that you know of?

A. No, sir.

Q. There is no conflict with labor unions or members or officials or anything of that nature?

A. No. sir.

Q. And you have served on a jury trying criminal cases?

A. Yes, one jury.

Q. Did anything occur during the course of that trial that would tend to prejudice you against a person charged with a crime?

. A. No, sir.

Q. Or against the State of Washington or its prosecuting [fol. 171] officials?

A. No, sir.

Q. And you can divorce your mind completely from that case?

A. Yes, sir.

Mr. Regal: Pass Mr. Arndt for cause, Your Honor.

By Mr. Burdell:

Q. Mr. Arndt, I understand from my notes that in answer to the Court's question, general question, you did not indicate that you had heard any expression of opinion concerning Mr. Beck or the Teamsters' Union, or have you?

A. Of a very general nature. I never was very much

interested in the case.

The Court: Can't hear you, sir.

A. I'm sorry. In a very general nature. I have heard some discussions but nothing specific.

Q. Well, have you heard hostile statements of a general

nature towards Mr. Beck?

A. No, surprisingly there is very little discussion in my department. I wasn't much interested in it.

Q. Would that be true also among your friends and your

relatives?

A. Yes, my wife and I never discuss the case.

Q. Have you read or did you read last summer any newspaper reports or see any television programs concerning the McClellan Committee hearings?

A. I didn't see any of the television, I wasn't interested. I did read some of the headlines but I did not read the

articles thoroughly, I wasn't interested.

Q. But in any event, the headlines, let me ask you this, [fol. 172] are you a person who you think who has a tendency to be impressed by or to believe headlines that you

see in the newspapers necessarily because they are in the newspapers?

A. No, sir, I am not.

Q. In other words, do you believe in this particular case you can treat whatever newspaper reports you saw as in effect not having been made?

A. I don't understand your question.

Q. Can you treat those—can you consider this case from the point of view of never having even observed or read whatever newspaper headlines you saw?

A. I never did pay too much attention to them.

Q. Well, in any event, even if you do read them, can you approach this case on the theory that things that are said, either good or bad, about a person in newspapers just may or may not be true? Can you treat this case in that fashion?

A. Yes, sir, I am positive.

Mr. Burdell: Pass this juror for cause.

By Mr. Regal:

Q. Mrs. Fields?

A. Yes.

Q. Are you employed, ma'am?

A. No, sir.

Q. Have you ever been employed?

A. Yes, sir.

Q. What kind of work have you done?

A. Teaching.

[fol. 173] Q. And has that been in this area?

A. You mean in King County?

Q. Well, in Washington?

A. Yes, all of it.

Q. What teaching did you do?

A. Grades.

Q. All the grades, or do you specialize?

A. Up to 7th.

Q. How long did you teach?

A. Oh, all totaled about 12 or 14 years.

Q. Has that been the only work that you have done?

A. Yes.

Q. What does your husband do?

A. He is retired from the Navy.

Q. What was his rank in the Navy?

A. Chief boatswain's mate.

Q. Was he in the Navy all during your married life?

A. Yes.

Q. Prior to the time he retired?

A. Yes, but at present—Q. I beg your pardon?

A. At present he is at the Army Terminal.

Q. As a civilian employee for the government?

A. Yes, sir.

Q. What is he doing there?

A. He is a guard.

Q. Now, have you served on a jury trying criminal cases before?

A. No.

Q. This is your second or fourth week!

Q. And all of your cases have been civil?

A. Yes.

Q. Do you have any children?

A. No.

Q. No children?

A. No. .

Mr. Regal: Pass Mrs. Fields for cause, Your Honor.

By Mr. Burdell:

Q. Mrs. Fields, you have heard of this case?

A. Yes, I have.

Q. And you have, I assume, read a rather substantial number of newspaper articles concerning the Teamsters' Union and concerning Mr. Beck!

A. Oh, yes, somewhat.

Q. And seen television reports to some degree!

A. Some degree, yes, sir.

Q. And some of these—what about discussions? Have you discussed either this case or Mr. Beck in general with any of your friends?

A. No, I have not.

Q. Or with your husband?

A. No, he doesn't discuss things like that.

Q. You say he was a former chief boatswain's mate?

A. Yes.

- Q. The highest rank in the Navy?
 A. Well, I don't know about that.
- Q. Mrs. Fields, whatever statements you heard about [fol. 175] Mr. Beck, do you think that you would be able to try this case on the theory that they simply were not true!

A. I think so.

Q. And you could treat them as not having been made!

A. I think so.

Q. And in other words, you too understand that statements made out of court not subject to cross examination, either in the newspapers or in other places, cannot be considered by you and cannot be applied by you and are not necessarily reliable in so far as your determination of this case is concerned?

A. Yes.

Q. Do you understand that?

A. Yes.

Q. And I guess by now you have learned, have you, that statements in newspapers, whether they are good or bad about a person, may not be true or may be true. Insofar as this case is concerned, do you think you could forget them?

A. Yes, I think so.

Mr. Burdell: Pass the juror

By Mr. Regal:

Q. Mr. Westenberg?

A. Yes.

Q. Your employment is general freight agent?

A. That's right, for the Green Bay & Western Railroad.

Q. And the office is here in town?
A. Yes, in the Vance Building.

Q. How long have you been with that company, sir?

[fol. 176] A. About 27 years. Q. Before that you did what?

A. Before that I was with the Transcontinental Freight Bureau.

Q. Same type of job?

- A. Yes, more or less, it is in freight making, and prior to that with the Western Truck Lines, which is a committee or group of freight making group for the middle western carriers.
 - Q. Were you a member of the Railroad Union?

A. No.

Q. During any of that time?

A. No, never have been.

Q. And where is your-what is your home state, sir?

A. I was born in Chicago.

Q. When did you come out here to this area? A. 1940. I opened the Portland office in 1940.

Q. Have you lived in any other state in the Union?

- A. Yes, I have lived in New York and Massachusetts and Oregon.
- Q. Is Chicago where you were born?

A. Yes.

Q. Is your wife employed, Mr. Westenberg?

A. No.

Q. Are you married?

A. Yes, that's right.

Q. And is your wife employed?

A. No.

Q. Has she ever been employed?

- A. Yes, before I married her, and she quit right after I [fol. 177] married her.
- Q. And then you worked. You did not use the right psychology. What kind of work did she do?

A. She was a legal secretary.

Q. In this area?

A. No, in Boston.

Q. And that is the only kind of work that you know of that she did?

A. Yes, that's true.

Q. Do you have any children?

A. I have two, I have a girl 22 and a boy 18.

Q. And is the boy 18 going to school?

A. He is a pre-med student at the University of Washington.

Q. He has no part time job, I take it?

A. No.

Q. And the girl 22, is she married?

A. No, she just started working at Frederick & Nelson.

Q. Sales department?

A. Yes.

Q. She is a retail clerk?

A. Yes.

Q. Do you know whether she belongs to the Retail Clerks' Union or not?

A. I believe she does but I am not sure.

Q. You have no knowledge of it one way or the other!

A. No, I recall her mentioning something about it. I assume that she does because I believe most of them do.

Q. There has been no friction, no problems involving her

employment there with the union?

A. Oh, no.

[fold 178] Q. She has received no special favors and on the other hand she has received no disfavors because of her employment?

A. As far as I know.

Q. As far as you know.

The Court: Excuse me, Mr. Regal, it is time for the morning recess. Ladies and gentlemen of the jury presently in the box, you may now retire to the jury room. The court will now be at recess until 11:15.

(Recess.)

[fol. 179] The Court: The Clerk will please take the jurors' name or names from the box and place them on her desk. The Clerk will now place in the jurors' box the names of jurors sent to the Court this morning by the Presiding Judge. The Clerk will now call the names of four jurors. Will the jurors please answer present when called.

The Clerk: Ethel E. Forbes.

Voice: Here.

The Clerk: D. W. Roberge.

Voice: Here.

The Clerk: John C. Wilson, Jr.

Voice: Here.

The Clerk: Ida C. Wilbor.

Voice: Here.

The Court: The jurors whose names have just been called will please report to Department 2, Room 703, Judge Cramer.

Mr. Regal: Your Honor please, may the record indicate here that neither counsel have any objection to removing

four of the panel sent down here.

The Court: This matter was discussed in chambers and counsel agreed that this matter might be handled in this manner. The Clerk will now remove from the jury box the names remaining. Are they removed?

The Clerk: They are, Your Honor.

The Court: Place in the box the names of the jurors that were previously there. Bring in the jury, please.

(Jurors in the jury box.)

[fol. 180] The Court: Please be seated. Mr. Begalf

Questions by Mr. Regal:

- Q. Mr. Westenberg, this is your second or fourth week, sir!
 - A. This is my second week.
- Q. And have you sat on a jury trying criminal cases before f
 - A. No.
- Q. You have not. You have sat on a jury trying civil cases f
 - A. That is right.

Mr. Regal: Pass Mr. Westenberg for cause.

Questions by Mr. Burdell:

- Q. Mr. Westenberg, you were one of those whom I believe said you had heard expressions of opinion about this case or about Mr. Beck!
 - A. That's right.
- Q. Were those expressions, did they refer to this case specifically f

A. Not to this particular case that we have before us

now, but to the general situation.

Q. When you say to the general situation, did you have reference to something that occurred in the course of those Senate hearings last summer?

A. Duting back to the McClellan Committee.

Q. Were those expressions expressions of resentment or hostility towards Mr. Beck!

A. I would say preponderantly they were hostile.

Q. Did those take place among your friends or relatives! A. Well, I discussed it with dozens and dozens of people. [fol. 181] They were friends and business acquaintances.

Q. And in the course of these discussions did you express or did you have any opinion concerning Mr. Beck, generally

that you have at the present date?

A. Yes, I did, and I argued right along with everyone else. I think you can understand how those discussions go. particularly in a round table discussion, everyone has.

Q. When you refer to round table discussion, you don't mean to say there were any formal discussions at any

meetings or anything of that sort?

A. No, just a luncheon get-together at the Arctic Club or the Rainier Club.

Q. Are you a member of the Rainier Club? A. No, I am a member of the Athletic Club.

Q. I didn't ask you about your own expressions, whether or not your own expressions were hostile to Mr. Beck or favorable to Mr. Beck or were you one of those people who takes contrary positions either way from time to time!

A. Yes, I do that on occasions for the sake of arguing. However, dating back to the time of the McClellan Investigation Committee hearings in Washington, I was very much at that time opposed to the Fifth Amendment under the circumstances. Later when I learned that there was other litigation or other cases coming up, I changed my mind somewhat on the Fifth Amendment procedure.

Q. You have come to the conclusion that under certain circumstances it is an appropriate and proper right to

exert? [fol. 182] A. That is right. Certain circumstances. It was not a court hearing. It was merely an investigation

and I believe, of course, that the questions probably could have been answered without difficulty but in view of the fact that there were other cases pending, I understand why he did not testify to something that was going to be heard once again.

Q. Well, now, did you have any or do you at the present time have any opinion or feeling as to whether or not the assertion of this constitutional right implies or carries

with it any implication or consciousness of guilt?

A. No.

Q. Since then, Mr. Westenberg, have you followed the newspapers from time to time concerning this case and other transactions or proceedings involving Mr. Beck or the Teamsters' Union?

A. Yes, I have.

Q. Now, aside from this case, at the present time, as a result of all of these things you have read and heard, do you feel that you have any prejudice toward Mr. Beck in any way that would affect your consideration of this

particular case, these particular facts?

A. No. However, there is one thing I would like to mention to you now. Perhaps it should have been answered in the general questioning. However, it didn't appear at the time to be pertinent to it. Among people whom I have discussed this case with, and I am telling you this and both counsel so you can be guided, a very good friend of mine, Howard Sylvester, I believe has some litigation pending [fol. 183] against the Western Conference of Teamsters arising out of Initiative 198, but that of course is a case against the Western Conference of Teamsters and not against Mr. Beck personally.

Q. Has Mr. Sylvester made any statements in connection with that litigation involving Mr. Beck personally?

A. No, other than just in a very general way.

Q. Did you understand from that, from Mr. Sylvester, that Mr. Beck personally had anything to do with this suit and this difficulty which has arisen?

A. No.

Q. So far as you know from Mr. Sylvester, his relationships in connection with that matter were purely with other people, is that a correct statement?

A. That is right. It was a public relations job.

Q. Do you understand that Mr. Beck is president of the International Brotherhood of Teamsters and do you be lieve you would be inclined to hold him responsible in any way, that is, as president of the International, because of some acts of the Western Conferences which is down the line?

A. A subsidiary.

Q. Do you think you might be inclined to hold Mr. Beck responsible for that?

A. I doubt it very much.

Q. Has Mr. Sylvester ever indicated any personal hostility toward Mr. Beck personally?

A. Not to my knowledge. At least not to me.

Q. Do you know whether or not Mr. Sylvester knows Mr. Beck personally?

[fol. 184] A. I am not sure but I rather imagine he would.

Q. Do you know whether or not in connection with this public relations job that he had, whether or not he had any personal, business or other transactions with Mr. Beck?

A. No, I don't know that.

Q. In other words, you think I can be satisfied that while Mr. Sylvester has the usual resentment that a plaintiff does in a civil suit toward the defendant, your friendship with him in this case wouldn't affect your deliberations!

A. That is my opinion, that I believe I could set that

aside.

Q. You understand that you can only express that as a matter of opinion?

A. That is right.

Q. You will do your best?

A. That is right.

Q. Now did you read anything—I assume from what you have said about your conversations and your general knowledge of these affairs, that you have read or heard about the case which was tried several days ago against Mr. Beck's son and the results?

A. Yes.

Q. Do you understand or do you have any idea or feeling as to whether or not that case is connected in any way with this case?

A. It involves the same set of circumstances, I mean the same commodity, I should say, but whether or not there was any connection between the two or not, I couldn't [fol. 185] say.

Q. In any event, again do you think—is it your opinion that you can consider this case without any reference

whatsoever to the results in the previous case?

A. Yes, I am sure I can do that.

Q. Is there anything about your work, Mr. Westenberg, which would—let me put it a little broader. Is there anything about your work or about the nature of these discussions that you have had—I want to ask this question because of the fact that you recognize that you are going to be able to do this only as a matter of opinion—I would like to ask if there is anything about the work that you do or the discussions which you have had with your friends and the reports that you have seen circulated which lead you to think that unknowingly you may have some subconscious prejudice which might affect your deliberations?

A. Well, that would be, I believe, rather difficult to an-

swer.

Q. You don't know?

A. I haven't probed my subconscious lately.

Q. But at least you understand what I am trying to get

A. Yes, I understand.

Q. And do you think-

A. Well, I believe that I can carry on without.

Mr. Burdell: Pass this juror.

[fol. 186] DIXON VALLANCE (whereupon, promising to true answer make to questions propounded to him touching upon his qualifications to act as juror, was duly sworn).

Voir Dire examination.

By Mr. Regal:

Q. Mr. Vallance, would you tell us your employment,

A. I am with the Pacific Telephone & Telegraph Com-

Q. And what do you do for them?

A. My title is plant staff supervisor.

Q. Now you have been in the box during the entire time! You were one of the first jurors called?

A. Yes, sir.

Q. And you haven't replaced anyone. All the general questions that the Court asked, do you recall all of those questions?

A. Yes, I do.

Q. Are your answers the same today as they were yester-

day or is there some change?

A. Well, there is one change. The Court asked if anyone had any reason why sickness might have an effect. I didn't think at that time it had any effect upon me but last night I didn't feel too good.

Q. I noticed you looked agitated today.

A. Yes. That is the reason I was thinking about asking to be excused.

Q. Because of health reasons?

A. I was in good health up to now. I didn't see any reason yesterday why I should claim that.

The Court: What is your condition of health?

[fol. 187] The Juror: My health has been excellent up to now but last night I had considerable pains in the region of my stomach. I thought it was probably ulcers.

The Court: Have you been inflicted with that illness pre-

vious to this?

The Juror: No, sir.

The Court: Have you consulted a doctor recently?

The Juror: No, it's been about a year since I had a check-up.

The Court: What is your age?

The Juror: 64.

The Court: You may continue examination.

By Mr. Regal:

Q. Do you have any trouble today, Mr. Vallance!

A. Not right now.

Q. Your name is spelled V-a-l-a-n-c-e?

A. Two l's.

Q. All right. That trouble you had last night could have been something you ate?

A. Could have been, yes.

Q. How long have you been with the Pacific Telephone & Telegraph Company?

A. It will be 35 years the first of May next year.

Q. Has that always been in this area, sir?

A. Always in Washington.

Q. And is Washington your home state?

A. Well, it has been since I took up residence here.

Q. When did you do that?

A. 1923.

[fol. 188] Q. Prior to that, where did you live?

A. Vancouver, B. C.

Q. Were you a Canadian citizen at one time?

A. Yes, I was.

Q. You are a naturalized citizen now?

A. Tes. I have been.

Q. Since how long?

A. Oh, I think it's been about 33 years.

Q. What did you say your work was with the Pacific Telephone & Telegraph Company?

A. My work is comparable to the shall we say the principal of a school, in heading up the training classes.

Q. You teach the new employees?

A. Yes, supervisor of the instructors who do the teaching.

Q. You supervise the teachers?

A. Yes, sir.

Q. How long have you held that job?

A. Since about 1939, I guess. '38 or '39.

Q. Are you married, Mr. Vallance?

A. Yes.

Q. You have children?

A. No, we have no family.

Q. Has your wife worked at any time during your marriage?

A. No, sir.

Q. Other than housework?

A. Yes.

Q. Taking care of you? A. Yes, sir.

Q. Now this is your second or your fourth week? [fol. 189] A. This will be the second week.

Q. And did you serve on a jury trying a criminal case before?

A. I did, yes.

Q. Did anything occur during the course of that trial that would tend to prejudice you against a person charged with crime?

A. No.

Q. Would anything about that trial tend to prejudice you against the State of Washington?

A. No.

Q. Or its prosecuting officials?

A. No.

- Q. You can divorce your mind completely from what occurred before and pay close attention and judge this case entirely on its merits and not intermingle the two in your mind?
 - A. I don't think I have any reason to do anything else.
- Q. Ordinarily not, but I just want to know whether you feel that way?

A. Yes.

Mr. Regal: Pass Mr. Vallance for cause.

Voir Dire examination.

By Mr. Burdell:

- Q. Mr. Vallance, you have heard the questions I have asked the other jurors about having heard expressions of opinion concerning this case. Is there anything that you know of or is there any feeling in your mind—you have heard all those questions, haven't you?

 [fol. 190] A. Yes.
- Q. Is there anything in your mind at all that would lead you to believe that for any reason you might have any difficulty in deciding the issues in this case impartially and fairly?

A. I don't think of any question about that.

Q. Do you think I can be satisfied that you will decide the case on the facts in evidence and the instructions and

not on the basis of some assertion or claim you may have heard or read outside of court?

A. I don't think I would be guided that way.

Mr. Burdell: Pass Mr. Vallance for cause.

[fol. 191] PAUL F. LANGE (whereupon, promising to true answer make to questions propounded to him touching upon his qualifications to act as juror, was duly sworn).

Voir Dire examination.

By Mr. Regal:

- Q. Mr. Lange, you have been in the jury box all the time?
- A. Yes.
- Q. Since yesterday has anything occurred at all as far as answers to the general questions are concerned which you should bring to the attention of the Court at this time?
 - A. No.
 - Q. Everything is the same as yesterday?
 - A. Yes.
 - Q. What kind of work do you do?
 - A. Retired.

The Court: Louder, please.

- A. Retired.
- Q. What kind of work did you do?
- A. Postal transportation service, civil service under the Post Office Department.
 - Q. How long were you in that?
 - A. 45 years, a little over.
 - Q. How long have you been retired?
 - A. Since '54. Three years!
 - Q. And did you do other kinds of work prior to that time?
- A. I was a machinist for four years before I took the civil service exam.
- Q. Was that in this area? [fol. 192] A. Bellingham.
 - Q. That was a union job?
 - A. Yes, I had a union card for two years.
- Q. And when you got into civil service, of course, you no longer belonged to the union?

A. No.

Q. You are married, Mr. Lange?

A. Yes.

Q. You have children?

A. One boy.

Q. How old is the boy?

A. 41.

Q. What kind of work does he do?

A. He was a mining engineer. The last four years he has been secretary for the Engineers' Joint Council in New York.

Q. Now the Engineers' Joint Council, what is that, sir?

A. Well, all the engineering organizations last June had a meeting in town and he was out here to address them. There are eleven affiliated engineering organizations.

Q. They resemble a labor union in that it is an or-

ganization of engineers?

A. Well, they are not in the category we think of-

Q. Like the National Association of Manufacturers?

A. More like the medical association.

Q. The medical association?

A. Yes.

Q. Sort of a professional association?

A. Yes.

Q. He has a job as secretary to that?

[fol. 193] A. Yes, national secretary to that association.

Q. He is married?

A. Yes.

Q. Does he have children?

A. Two.

Q. How old are they?

A. Marjorie is 4 and the other is 2.

Q. I see. Babies. His wife, does she work?

A. No.

Q. Have you served on a jury trying a criminal case before?

A. No.

Q. Is this your second or fourth week?

A. Second week.

Mr. Regal: Pass Mr. Lange for cause, Your Honor.

Voir Dire examination.

By Mr. Burdell:

Q. You have served on other juries before, Mr. Lange?

A. Well, in Judge Gaines' court two weeks ago, a civil case.

Q. Two civil cases?

A. One they settled while we were on the job and the next one we—

Q. Mr. Lange, now again I will just ask you one question. You have heard all of these questions. Do you think I can be satisfied that you will be able to conduct your deliberations with complete impartiality and without reference to any reports or discussion you may have heard outside of the courtroom?

A. Yes, sir.

Q. And you believe that you will be able to treat what-[fol. 194] ever reports or discussions you may have heard as never having been heard by you?

A. Yes, surely.

Q. You have served on two cases and I take it you understand at some times statements made in newspapers and outside of the court, whether for or against a person, may not be entirely correct?

A. Yes, I thoroughly understand that.

Mr. Burdell: Pass Mr. Lange for cause.

The Court: The State's first peremptory challenge.

Mr. Regal: The State will excuse Mr. Ryan, Juror No.

3, Your Honor.

The Court: Mr. Ryan, please step down.

The Clerk will call another juror.

The Clerk: Harold R. Brown, 9221 47th Avenue Southwest.

HAROLD R. BROWN (whereupon, promising to true answer make to questions propounded to him touching upon his qualifications to act as juror, was duly sworn).

By the Court:

Q. Mr. Brown, were you present in court yesterday and sworn with the rest of the jurors?

A. I was, Your Honor.

Q. Did you hear the Court's reading of the indictment and the brief explanation of the case and the introduction of the parties and counsel?

A. Yes, I did.

Q. Did you hear and understand the questions that I [fol. 195] asked the jurors yesterday?

A. Yes, sir, I did.

Q. And the questions that I asked the jurors today with respect to matters occurring overnight, did you hear and understand those, sir?

A. Yes, sir.

Q. Would you have answered any of those questions by raising your hand?

A. Well, I have heard of the case.

The Court: Yes, sir, that is the first question.

A. Overnight I can think of nothing.

The Court: Any of the other questions yesterday that you would have answered in the affirmative by raising your hand?

A. No.

The Court: Gentlemen, you may inquire.

Voir Dire examination.

By Mr. Regal:

Q. Mr. Brown, what is your employment?

A. I am an electrical engineer with the Boeing Airplane Company.

Q. How long have you been with Boeing?

A. 25 years.

Q. And prior to that did you work at anything or did you go to school?

A. No, prior to that I worked for various concerns first.

Q. Electrical engineering!

- A. Electrical or structural. Immediately before Boeing's I was with Wallace Bridge & Structural Steel for about a [fol. 196] year. Before that with Northwest Steel Rolling Mills.
 - Q. Always as an engineer? That has been your work?

A. Yes.

Q. Did you take your degree here at the University of Washington?

A. Electrical engineering at Washington.

Q. When did you take that, sir?

A. 1926.

Q. I will have to ask you some general questions. Did you hear the general questions I asked the other jurors about whether or not any close friend or relative was ever involved in a criminal case of any kind?

A. Yes.

Q. Has there been in your family?

A. The answer would be no.

Q. Or acquaintances?

A. No.

Q. Do you know Mr. Burdell and Mr. Keough or any of their associates?

A. No. sir.

Q. Do you know Mr. Carroll or any of the prosecuting attorneys working for him?

A. No.

Q. Are you married, Mr. Brown?

A. Yes, sir.

The Court: Speak just a little bit louder, sir.

A. Yes.

Q. Does your wife work, sir?

A. No.

Q. Has she ever worked since you were married? [fol. 197] A. Not since.

Q. Prior to that time?

A. Yes.

Q. What kind of work did she do then?

A. Stenographic work.

Q. Do you have any children?

A. Two:

Q. How old?

A. One boy 15, one 11.

Q. They are both attending school here in Seattle?

A. Correct.

Q. Have you served on a jury trying a criminal case before, Mr. Brown?

A. No.

Q. This is your second or fourth week!

A. Second.

Q. You have served on a jury trying a civil case?

A. That's right.

Mr. Regal: Pass Mr. Brown for cause, Your Honor.

Voir Dire examination.

By Mr. Burdell:

Q. Mr. Brown, have you participated in any discussions or been present at any discussions concerning Mr. Beck or concerning this case?

A. Yes. Not this case, no. I would say no.

Q. But I take it you have participated in discussions involving assertions made about or against or in favor of Mr. Beck?

A. Yes, I would say.

[fol. 198] Q. And where have those discussions—first, have those been discussions with friends and neighbors?

A. I would say they were so general over a period of years that I have lived in Seattle that I couldn't say specifically.

Q. But it could include friends and neighbors or business

associates ?

A. Right.

Q. Now have you—you mentioned a period of years. Do you recall particularly any discussions commencing during these so-called McClellan Committee hearings?

A. Very little.

Q. Do you recall any specific conversation about those hearings or about that subject?

A. Nothing more than just the routine comments about

headlines that people will make.

Q. Well, now, have some of those consisted of statements of an adverse nature or hostile nature toward Mr. Beck?

A. To me, yes.

Q. You specified they were to you. Do I understand that you made no response of a similar nature?

A. I would say no. I have no basis for responding.

Q. Do you recall whether or not these were discussions with close relatives? I mean were they discussions with anyone whose opinion or whose assertion you might accept as being true or having some foundation?

A. No.

- Q. In other words, so far as you know, any discussion of that sort you had were simply made by persons who read some headline in a newspaper?

 [fol. 199] A. That is correct.
- Q. Now did you say you had served on a civil case or two civil cases?

A. I have on one.

Q. What about the television reports of this McClellan Committee hearing? Did you observe or hear any of those?

A. I don't think I saw any of them.

Q. Do you believe, Mr. Brown, that you could treat the assertions or statements that you heard as being—or as never having been made as far as this case is concerned?

A. I believe there is a grave doubt there.

Q. You think there might be something in your mind as a result of all of these statements that would create some impression or opinion in your mind that would take some evidence by the defendant to counteract?

A. I believe there would be.

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The Court: You may be excused, Mr. Brown. Thank you. The Clerk will call another juror.

The Clerk: Emma M. Bird, 8626 Fauntleroy Avenue.

[fol. 200] Emma M. Bind, 8626 Fauntleroy Avenue (whereupon, promising to true answer make to questions propounded to her touching upon her qualifications to act as juror, was duly sworn).

Voir dire examination.

By the Court:

Q. Is it Miss or Mrs. Bird?

A. Mrs.

Q. Mrs. Bird, were you in court yesterday and sworn with the rest of the jurors?

A. Yes, sir.

Q. Did you hear the Court's reading of the indictment and the general brief explanation of the case?

A. Yes.

Q. The introduction of the parties and counsel and the reading of the names of the witnesses?

A. Yes, sir.

Q. Did you hear and understand the questions that the Court asked the jury yesterday?

A. Yes, sir.

Q. And the questions that the Court asked the jurors today?

A. Yes, sir.

Q. Would you, in answer to any of those questions, have raised your hand?

A. No. 1 yesterday.

Q. About having heard of the case before?

A. Yes. In a general way; not specifically.

Q. I understand. Any other questions?

A. I have heard other talk of it some, not a great deal, [fol. 201] because I spend most of my time at home except since I have been on the jury.

Q. Is there anything from the nature or kind of case this is that would prevent you from being fair and impartial?

A. I don't believe so.

Q. Do you know of any reason at all why you could not serve on this jury as a fair and impartial juror?

A. No.

The Court: Gentlemen, you may inquire.

Voir dire examination.

By Mr. Regal:

- Q. Mrs. Bird, is that right?
- A. Yes, sir.
- Q. Are you employed—no, you are not employed.
- A. Housewife.
- Q. And what does your husband do?
- A. Electrical engineer at Boeing Airplane Company.
- Q. You don't know Mr. Brown, do you?
- A. Yes, sir, I do.
- Q. Did you meet him through your husband?
- A. Yes, sir.
- Q. Do they work together, do you know?
- A. They did at one time, yes. Not now.
- Q. I see. How long has your husband been at Boeing's, ma'am?
 - A. Since February of 1941.
 - Q. What did he do prior to that?
- A. He was employed as a secretary for the Agricultural Adjustment Association in Montana.

[fol. 202] Q. For how long?

- A. I was trying to think. Three years, I believe. From 1936 to—no, it must have been 1937. It must have been four years.
 - Q. What kind of work did he do before that?
 - A. He was in college before that.
 - Q. What course did he take in college, do you know?
 - A. He majored in engineering physics.
 - Q. Where was that?

Ser

- A. Montana State College.
- Q. I see. Now did you—is Montana your home state, too?
- A. No. My home state is Iowa.
- Q. Have you ever worked at a job?
- A. Yes, I have been a schoolteacher.
- Q. Schoolteacher. What grades did you teach, ma'am?
- A. I taught three years in rural schools and five years in departmental work in 4th, 5th and 6th grades, and two years as art and penmanship teacher in the first seven grades.

Q. Did you ever teach in the State of Washington?

A. I have not.

Q. You taught in Iowa?

A. Iowa and South Dakota.

Q. I see. And after you married Mr. Bird, then you became a housewife?

A. Right.

Q. How many children do you have, Mrs. Bird?

A. I have three.

Q. How old are they?

A. Seventeen, fifteen and ten.

[fol. 203] Q. Is the seventeen-year-old a boy or a girl?

A. A boy.

Q. Does he do any outside work?

- A. Yes, he is employed in a drive-in restaurant on weekends.
 - Q. He does not belong to any union, does he?

A. No, he does not.

Q. Has your husband ever belonged to a labor union that you know of?

A. No, he has not.

Q. Never had any difficulty with labor unions?

A. No.

Q. Have you yourself?

A. No.

Q. Have you served on a jury trying a criminal case before?

A. No, I have not.

Q. Is this your second or fourth week?

A. My fourth week.

Q. You have served on juries trying civil cases?

A. Yes, sir.

Mr. Regal: Pass Mrs. Bird for cause.

The Court: Excuse me, gentlemen. It is time for the noon recess. I wish to instruct the jurors in the box and the jurors in the courtroom on the panel that during this recess and all recesses you are instructed not to converse with each other or with any other person concerning any matter connected with this case until I give you further

instructions. You may now be excused to return in time for the afternoon session at 1:30 this afternoon.

(Court recessed until 1:30 o'clock P.M.)

[fol. 204] Voir dire examination.

By Mr. Burdell:

Q. Mrs. Bird, will you tell me whether or not you have discussed this case or Mr. Beck with Mr. Brown?

A. No, we didn't discuss it except as to whether we might

get on the jury or not.

Q. That is while you have been on the jury panel?

A. Yes.

Q. Had you ever discussed it with him before that time?

A. No, I have not—I don't see him except on very rare occasions.

Q. Now, have you ever discussed Mr.—or this case or Mr. Beck with anyone else, any of your other friends or relatives or your husband or neighbors?

A. Not particularly; perhaps in a general way as the case might be mentioned, well, would I be likely to get on

it or something like that.

Q. Those discussions all took place after you became a member of the panel, is that right, after you became a juror?

A. After I became a juror.

Q. And those discussions were with neighbors or friends mostly?

A. No, just in the family and then with fellow jurors.

Q. Now, the discussions with fellow jurors, would they be of the same nature, would there be anything other than questions about whether or not you might be on the jury?

A. Just in regard to the jury.

Q. Was there considerable interest among the panel as [fol. 205] to who might be on the jury?

A. Oh, I think people will-all the jurors are somewhat

interested-whether they would be on.

Q. Were there in the course of the discussions that you have had, either while you have been on the panel or before then, have you heard discussions of the assertions and

claims made by the McClellan Committee in its hearings last summer?

A. No, I did see-I beg your pardon-I heard part of

that on the radio but I didn't listen to much of it.

Q. After those hearings or at any time since then in connection with this case or in connection with the Teamsters Union or in connection with Mr. Beck, have any of these instructions that you have had or things that you heard been of the nature which is hostile or prejudicial towards Mr. Beck?

A. I haven't been in any discussions of that nature. I have heard a few comments on both sides for and against.

- Q. And what is your own view at the present time towards the Teamsters Union or towards Mr. Beck? Do you have any prejudice towards that union or prejudice or resentment towards Mr. Beck that you would have to lay aside or consider in connection with this trial?
- A. No. I have no resentment. I have no connection with the Teamsters Union or Unions.
- Q. Do you have any feeling towards unions or the union movement in general which you might have to lay aside in connection with your deliberations?

A. No.

[fol. 206] Q. I noticed that you said you thought you could be fair and impartial and what I am trying to find out is, do you feel that in being fair and impartial it will be necessary for you to put some feeling of maybe hostility or resentment in the background and lay it aside?

A. No, I don't feel that way.

Q. You have no problem about that? In other words, you think you are fair and impartial as you approach it without having to lean over backwards or anything of that sort?

A. Yes, sir.

Q. Now the discussions you had with prospective jurors, did they include any of the jurors to your knowledge who were called as prospective jurors in the earlier case involving Mr. Beck's son?

A. No.

Q. And the interest that you say existed among the members of the jury panel, can you state what the context or the nature of the discussion was which indicated the interest,

I just want to be sure if it was an interest in the case or did the discussion indicate some hostility toward Mr. Beck?

A. No, I think it is an interest in people. We have become acquainted with so many people during this brief four weeks or three and a half weeks that you are just interested in people and which jury they will be on.

Q. I guess you do that in any case?

A. Yes.

[fol. 207] Q. All right, thank you.

Mr. Burdell: Pass this juror.

[fol. 208] The Court: Defendant's first peremptory challenge.

Mr. Burdell: May I have a moment, Your Honor?

The Court: Certainly.

Mr. Burdell: Your Honor, the defendant will excuse No. 4, Mr. Kraatz.

The Court: Mr. Kraatz, will you step down, please.

The Clerk will call another juror.

The Clerk: Leonard E. Morris, 4205 150th Southwest, Bellevue.

The Court: Mr. Morris, were you present in this court on this case yesterday?

The Juror: No, sir.

The Court: Will all of the jurors on the panel sent down from the Presiding Judge who were not here yesterday please stand, including Mr. Morris. Are there any other jurors on the panel in the courtroom? If so, please stand. I see jurors in the first two rows and Mr. Morris. Please be seated. Of the jurors who just stood in the courtroom, are there any present who were present in this department at any time during the trial of a cause entitled "State of Washington vs. Dave Beck, Jr."? If so, please stand.

And your name, sir?

The Juror: Orlando Silva. I was just here for a short time on the interrogation of the jurors but not on the trial.

The Court: You may now report back to the department of the Presiding Judge. Will all of the jurors who [fol. 209] were present in the courtroom who were not present yesterday please stand, raise your right hand to be sworn.

The Clerk: You and each of you do solemnly swear that you will true answers make to such questions as may be asked you by or under the direction of the Court touching upon your qualifications to serve as jurors in this cause, so help you God?

The Jurors: I do.

The Court: Please be seated. Before I give you a general explanation of the case and introduce the parties and counsel and ask you questions with respect to your qualifications to sit on this jury, I would like to ask all of you, Mr. Morris in the box and the rest of the jurors on the panel, are there any jurors present who have not participated as a juror before today? Please raise your hands. I will ask you to stand, perhaps that is easier. Your name, madam?

Voice: Doris Waddell.

The Court: Your name, sir?

Voice: Peter Christian Peterson.

The Court: Mr. Peterson, is this your first day on the jury?

The Juror: No, I was here a week before.

The Court: And you have not served on any case at all?

The Juror: One, but it was settled out of court.

The Court: Settled during the trial?

The Juror: Yes.

The Court: And you, madam?

[fol. 210] Voice: I just began yesterday and I haven't served on a case.

The Court: Thank you. Please be seated. Have either of you two who just were standing not read the pamphlet information to the jurors that was handed out to you, if it was, by the Presiding Judge?

Voice: I have read it.

The Court: Thank you. The case presently in this department is entitled the State of Washington, Plaintiff, vs. David D. Beck, also known as Dave Beck, Defendant. It arises from an indictment by the Grand Jury stating as follows:

He, the said David D. Beck, also known as Dave Beck, in the County of King, State of Washington, on or about the 3rd day of February, 1956, then and there having in his possession, custody or control as agent, bailee, employee, servant, officer or trustee, certain personal property, towit: the sum of \$1900.00 lawful money of the United States, the property of the Western Conference of Teamsters, an unincorporated association organized as a labor union, the said \$1900.00 being derived from the sale to one Martin B. Duffy on or about the 30th day of January, 1956, of one 1952 Cadillac automobile, motor number 526004746, the property of said Western Conference of Teamsters, the said David B. Beck, also known as Dave Beck, in the County of King, State of Washington, on or about the 3rd day of February, 1956, then and there did wilfully, unlawfully and feloniously secrete, withhold or appropriate the said \$1900.00 to his own use with intent to deprive and defraud [fol. 211] the owner thereof;

Contrary to the statute in such case made and provided, and against the peace and dignity of the State of Washington.

To this indictment the defendant has entered a plea of not guilty. Endorsed as witnesses in this matter are the following persons: M. J. Devine, Frank E. Dutton, M. B. Lake, Martin B. Duffy, Donald D. McDonald, Ken Eline, David L. Forrest, Alfred Roger Hill, Charles V. Leaf, Carl E. Houston, Ludwig Lobe, Samuel B. Bassett, Frank W. Brewster, Marcella M. Guiry, William H. Marx, Russell Schley, Louise Sartor, E. E. Hepper, J. J. David, Roger Jones and William F. Devin.

We are now engaged upon, ladies and gentlemen, I am speaking particularly to Mr. Morris and the new members of the panel who have just been sworn, you are now engaged in the process of selecting the jury in determining whether or not when called you are qualified to sit as a juror in this case. I ask you therefore to give close attention to all of the remarks of the Court and counsel in the explanation I am now giving and will give and in the future during this period of time, even though my questions may be particularly directed to Mr. Morris at the moment, I will expect to have you respond to those questions, perhaps if you are called in the future, and thus ask you to pay close attention to them. To these questions to you, Mr. Morris,

will you please answer them—first, though, however, I would like to introduce to all of you present the partici-[fol. 212] pants in this trial. The State of Washington is represented by the Prosecuting Attorney, Mr. Charles O. Carroll. Mr. Carroll, please. Thank you.

Deputy Prosecuting Attorney, Mr. Laurence D. Regal;

Mr. Regal.

Assisted by Deputy Prosecuting Attorney, Mr. Charles Smith.

The defendant, Mr. Dave Beck; Mr. Beck, will you stand?

Thank you.

He is represented by Mr. Charles Burdell, and Mr. John

Keough, assisting. Thank you.

I would like to ask you, Mr. Morris, now, have you heard of this particular case before?

The Juror: Yes.

The Court: Do you know the defendant?

The Juror: No, not personally.

The Court: Are you or have you ever been a member of an organization directly or indirectly connected with the Western Conference of Teamsters?

The Juror: Not with the Western Conference. I have

been a member of the Teamsters.

The Court: What union or local of the Teamsters?

The Juror: Local 174 and also I think it was 44, the garage helpers, I think it is.

The Court: Have you as a juror sat through a criminal

case completely?

The Juror: Not completely.

The Court: Have you as a juror sat through or participated in a civil case completely?

[fol. 213] The Juror: Yes.

The Court: How long have you been on the jury panel?

The Juror: This is my fourth week.

The Court: It may be necessary, it is necessary in this case and the Court has decided to confine the jury from the time of the selection and swearing in of the jury when finally selected to the end of the case. During such confinement the jury will be attended by two bailiffs and will be the particular concern of the Court in the arrangements made for their care. The jury is and will be residing in

dormitories provided in this building and will be fed at various hotels and restaurants and other public eating places in the vicinity. During that confinement it will be necessary and will be ordered by the Court that the jury will not have access to newspapers or radio or TV or other magazines, books, public communications. Of course, prior to being confined you will have an opportunity through the bailiffs of obtaining personal needs and also have the opportunity through the bailiffs of contacting personal families or relatives necessary to their or the jurors' comfort. I am sure that those who have participated in such events, if you haven't before, will not feel that you have been uncomfortable except as it may be uncomfortable to be confined or uncomfortable to be living in a dormitory situation with other persons.

Is there any reason that you know of that would prevent you, different than other jurors, from performing

[fol. 214] that duty?

The Juror: No, I think not.

The Court: I would like now to take a moment, ladies and gentlemen, to explain to you that the trial of a criminal case is different from that of a civil case in two very important respects. In a civil case, the plaintiff must prove his case by a preponderance of the evidence, which merely means a greater weight of the evidence, while in a criminal case, such as this, any criminal case, the State must prove its case beyond a reasonable doubt, which is a far greater degree of proof. The second principal difference is in a civil case ten of the jury may agree upon a verdict, whereas in a criminal case the law requires that all twelve agree in order to render a verdict. The procedure otherwise in a criminal case is the same essentially as a civil case in which you, as I have determined by that question, have participated. It is presumed that when a jury has been selected by each side the jurors will keep their minds open until the case is finally submitted to them and it is presumed that it is the jurors' duty to accept the instructions of the Court as to the law, without question, whether you agree with the law or not. In accepting the instructions of the Court the jury must base their decision on the law and the facts uninfluenced by any other consideration.

Now the purpose of the questions and examining you as to your qualifications to sit upon a jury in this case is to determine whether or not you have that frame of mind. [fol. 215] I will again turn to Mr. Morris for the answers to these specific questions but ask all of the panel to pay attention.

Do you, Mr. Morris, have any information regarding the particular offense here charged?

The Juror: Only what I have read in the papers.

The Court: Have you talked with anyone who claims to have had any firsthand information regarding the offense?

The Juror: No.

The Court: Has anyone ever expressed to you an opinion as to the guilt or innocence of the defendant of this charge?

The Juror: No, I think not.

The Court: Now I would like to inquire and pose you a question in a few moments concerning the possibility, I am assuming from your present answer, that you have read about this matter, this particular case or about something connected with this case or the defendant in the newspapers, or heard something on the radio, or heard and seen something on the television. I am going to question you on that subject, but before I do so, I wish to explain that the mere fact that you may have read something or heard something or seen and heard something by those media or otherwise, in those various types of communications, an account of the crime here alleged or an account of something else, does not necessarily in and of itself disqualify you from serving upon the jury. If that were the law, if it were to be held that way, then it would be obvious the result would [fol. 216] be that jurors would be composed of people who cannot read or hear or see. The very statement, of course, in stating it sounds ridiculous.

The test in this matter is not whether you have read or heard or seen something about the alleged occurrence in some of those media I have mentioned, newspapers, radio or TV, but whether if you were drawn on the jury you are able to enter upon the trial with an open mind and disregard that that you have read, heard or seen in that nature

and decide the issue here entirely and purely upon the evidence received at this trial and the instructions of the Court as to the law.

To put the same idea another way, you might say that this question is, do you now have an opinion or an expression as to the guilt or innocence or do you have an impression now as to the guilt or innocence of the accused which would require evidence to remove from your mind? If you do have such an opinion or impression, it is not fair, it is unconstitutional, improper under our system for you to sit upon the jury in any event. Neither side in any case should have the burden of having to remove from your mind preconceived opinions or impressions or bias opinions already formed. Everyone knows that impressions that they have received from what they have read in the newspapers or heard on the radio or seen or heard on the TV are not always true and would not rest a decision upon such an impression without a more formal and more convincing type of proof.

Now with respect to this matter, Mr. Morris, from what [fol. 217] you have read or heard or seen, do you feel that you have in your mind an opinion or impression as to the guilt or innocence of the defendant or such an opinion, as would require evidence to remove? If you do, please

say so.

The Juror: Well, I feel my mind is free and clear on the issue at court. There is some doubt in the past, I mean as far as the other hearings and whatnot, I don't know

whether I can clear those out of my mind or not.

The Court: Is there anything about the nature of this case, the kind of a case it is, that would cause you to start in a trial with any bias or prejudice either one way or the other?

The Juror: I think not.

The Court: Do you know of any reason why you could not try this case impartially?

The Juror: No, not other than what I have stated. As

far as the case itself, no.

The Court: I will ask you a question in a moment that requires you to make some assumptions. Assuming you were in the position of the Prosecuting Attorney charged

with the responsibility of handling this case for the State of Washington, or you were in the position of the defendant's counsel and could look into the minds of the twelve jurors in the jury box as you can look into your own mind, would you be willing as such counsel to submit a case of like importance and seriousness to twelve men and women in the same frame of mind that you are in at this time and feel [fol. 218] sure that you would have a fair and impartial trial?

The Juror: (Shakes head.)

The Court: All right, sir, you may be excused. The Clerk will please call another juror.

The Clerk: Gertrude E. White, 4310 Woodlawn.

The Court: Miss or Mrs. White?

The Juror: Mrs.

The Court: All right. Mrs. White, were you present in court and sworn with the rest of the jurors just a few moments ago?

The Juror: Yes, sir.

The Court: Did you hear the Court's brief explanation of the case and the introduction of the parties and counsel and names of the witnesses?

The Juror: Yes, I did.

The Court: Did you hear and understand the questions that I asked Mr. Morris just a few moments ago entirely! All the questions?

The Juror: Yes, I did.

The Court: Would you have answered any of those

questions by saying yes or raising your hand?

The Juror: Well, I would like to say, your Honor, that my husband has been in a very, very serious accident and he is going to have an operation, his right hand is going paralyzed and he is going to have an operation in the next week or ten days to keep his hand from going further paralyzed, and I just feel like I should not be tied up on the jury. He has had very, very serious injuries and I am a registered nurse and the doctor wants me to keep an eye on him.

[fol. 219] The Court: When did he have this accident?
The Juror: He had it in February. He had a brain injury, a whiplash neck injury, and other injuries.

The Court: Has he been disabled since then?

The Juror: No, he is working now. He was disabled for, I guess, about three months but he just isn't well at all.

The Court: When was the operation decided upon?

The Juror: Well, it will be the middle of December by the neurosurgeon.

The Court: When was the decision to have it decided?

The Juror: Well, let's see, just last week.

The Court: You may be excused.

The Juror: Thank you.

The Court: The Clerk will please call another juror. The Clerk: Miriam Smith, 1800 Taylor Avenue.

Mr. Regal: First name, please?
The Juror: Miriam, M-i-r-i-a-m.
The Court: Miss or Mrs. Smith?

The Juror: Mrs.

The Court: Were you present in court and sworn with the rest of the jurors, Mrs. Smith?

The Juror: Yes, sir.

The Court: Did you hear the Court's general brief explanation of the case and the introduction of the parties and counsel?

The Juror: Yes, sir.

The Court: Did you hear and understand the questions [fol. 220] that the Court asked Mr. Morris?

The Juror: Yes, sir.

The Court: Would you in response to any of those questions have answered yes or raised your hand?

The Juror: No, I don't think-no, I would have answered

in the affirmative.

The Court: You would have answered yes to some of those questions?

The Juror: No, no, I am kind of confused now. The Court: Do you remember the questions?

The Juror: Yes, I do.

The Court: Would you like me to repeat some of them or all of them?

The Juror: No.

The Court: Is there any reason from the nature of this case from what you have heard—

Mr. Burdell: Excuse me, Your Honor. I was going to approach the Court. I wonder if Counsel and I could have a brief recess for about three minutes and discuss a matter in chambers with you? Mr. Regal and I. I think he concurs.

Mr. Regal: That is satisfactory with me.

The Court: Court will be at recess for five minutes.

(The following occurred in chambers:)

Mr. Burdell: Outside there, there were a bunch of photographers and camera people and Beck has been coming up the stairs to avoid as much of that as he can, [fol. 221] and when he came back this noon there was a bunch of photographers there and as I understand it, Larry and I both heard it from some reporters, when he came upstairs there were a bunch of flashbulbs went off, photographers there, and he grabbed the woman who was on the side and said, "Get in the picture here," and it was this one.

Mr. Regal: He said, "Here, do you want your picture taken?" He could have either flattered her or ingratiated himself, I don't want to take any chance.

Mr. Burdell: Obviously he shouldn't have done it. On the other hand I can understand how it would happen.

Mr. Regal: Surely, he is nervous.

Mr. Burdell: Maybe we should go ahead-I don't know.

The Court: Well, I feel that without deciding it at the moment, so you will have an opportunity to talk about it, that she should be excused just so that we don't get into all this question of either side. It is not going to do anyone any good here or someplace else.

Mr. Burdell: If we could work it out, I prefer that she not be asked any questions which would result in her volunteering that anything, one way or the other, it could

work out either way naturally.

Mr. Regal: What I would like to do is to have us question her in the regular fashion and then at the recess notify the bailiff that she has been excused by the Court and the Court can make a discussion on the record that she has been excused by the Court by agreement of both [fol. 222] counsel, and it is already taken care of here

anyway, and then there will be no embarrassment as far as she is concerned, no question. They will call another juror to replace her. They will think it is a health reason, at recess.

Mr. Burdell: What time is it now?

Mr. McFeely: Ten past 2:00.

The Court: It would result, I am afraid, in some delay.

Mr. Regal: Can we pass her over?

Mr. McFeely: Why can't the Court excuse her after he questions her and go ahead without explanation?

Mr. Regal: It would be embarrassing to her. I would

like to do it surreptitiously.

The Court: I had the impression I was going to have to be more specific with her to have her understand what I am saying so I was going to—I mean, I want to be sure she does.

Mr. Regal: Let's go on with her and see if we can't challenge her or else do it at the recess.

Mr. Burdell: I would just as soon do that. I don't want to say anything to offend her—or we can take a recess.

The Court: I think it is wise not to just go out and excuse her but I think I will ask her some questions which have nothing to do with the subject which we just discussed but I will conclude by asking her age. I think that will take care of it in open court.

[fol. 223] (The following occurred in open court:)

The Court: We will resume, Mrs. Smith, with the examination with respect to your qualifications to sit upon this jury. I was not clear as to the answer to my last question. Perhaps I didn't put it properly because of the reference to Mr. Morris. I asked Mr. Morris some general questions to which he could have responded yes, such as, had he heard of the case before, does he know the defendant, about whether or not he has any first-hand information concerning the case, and I asked him to assume some matters, if he were in the position of the Prosecuting Attorney or the defense counsel and could look into the

minds of the twelve jurors as you can look into yours, and then I also asked him questions, explaining that the jury would be confined for some length of time, not an unreasonable length of time, and arrangements made for that, all of which could be answered either yes or no. And I asked him to answer if he were to answer those yes, to please indicate either by raising his hand or saying yes. What I want to ask you first is whether or not you had heard and understood those questions.

The Juror: Yes, I did.

The Court: Do you have them presently in mind?

The Juror: Yes, I do.

The Court: Would you, if you had questions directed to you then as they are now, have answered any of those questions by saying yes?

The Juror: Yes, the first one, I have read-

[fol. 224] The Court: You have heard of the case before, is that correct?

The Juror: Yes.

The Court: Any other of the questions that you would have answered yes?

The Juror: Well, in my frame of mind I would not like

to have the jury.

The Court: I see. Well, thank you. You may be excused. The Clerk will call another juror.

The Clerk: James G. Charles, 15709 Palatine.

The Court: Mr. Charles, were you present in court and sworn with the rest of the jurors?

The Juror: Yes, I was.

The Court: Did you hear the Court's general brief expanation of the case and the introduction of the various participants?

The Juror: Yes, I did.

The Court: Did you hear and understand the questions that I put to Mr. Morris?

The Juror: Yes, sir.

The Court: In answer to any of those questions that I put to him, would you have raised your hand in answering yes?

The Juror: Yes, I would.

The Court: Which questions?

The Juror: I have heard of the case before, that is to be tried, sir.

The Court: That is the first question, about having heard

of it before.

The Juror: Yes, sir.

[fol. 225] The Court: Any of the other questions that you would have answered with yes?

The Juror: I don't remember the exact wording of all

the questions, sir.

The Court: At the time of my asking the questions, did you feel that you would have answered any one with a yes? Do you recall having that impression? Is there anything in your mind now that gives you any doubt as to whether

you can be fair and impartial in this case?

The Juror: Sir, there has been a great deal of publicity on this particular case and on the Teamsters in general and in the past I have been a member of the Aeromechanics, at Boeing's, and truthfully, sir, I would myself not wish to be in the position of a juror where a person who has been exposed to as much comemnt as I have, would be.

The Court: Well, the question on that subject that I posed to Mr. Morris was, do you feel that you have in your mind an opinion as to the guilt or innocence of the defendant to such an extent that it would require evidence to

remove that opinion?

The Juror: Yes, sir, I do.

The Court: You may be excused.

The Juror: Thank you.

The Court: The Clerk will please call another juror. The Clerk: James P. Hubbell, 4222 Fifth Northwest.

The Court: Mr. Hubbell, were you present in court and [fol. 226] sworn with the rest of the jurors?

The Juror: Yes, sir.

The Court: Did you hear the Court's explanation in a general way of the case and introduction of the participants?

The Juror: Yes, sir.

The Court: Did you hear and understand the questions that I asked Mr. Morris!

The Juror: Yes, sir.

The Court: Would you have raised your hand in answer to those questions or indicated a "yes" to any of them?

The Juror: The first one.

The Court: The first one, having heard of the case be-

The Juror: Yes.

The Court: Is there any reason because of the nature or kind of case this is that you would start in with the trial with any bias or prejudice whatsoever?

The Juror: No, sir.

The Court: Do you know of any reason why you could not try this case fairly and impartially?

The Juror: No, sir.

The Court: Gentlemen, you may inquire.

Voir dire examination.

By Mr. Regal:

Q. Mr. Hubbell, what kind of work do you do, sir?

A. Industrial engineer, Boeing Airplane Company.

Q. How long have you been at Boeing's?

[fol. 227] A. Six and a half years approximately.

Q. Where were you before that?

A. Before that I taught a year in business college in Olympia, Dietz Business College in Olympia, Washington.

Q. And you taught an engineering course there!

A. No, it was accounting.

Q. Oh, accounting; and before that, sir?

A. I was working part time in the school.

Q. Part time where?

A. In Olympia.

Q. What kind of work?

A. Accounting work.

Q. Accounting work?

A. Yes.

Q. And you attended school in Olympia?

A. Yes.

Q. What school was that?

A. St. Martin's College.

Q. St. Martin's!

A. Yes.

Q. How old are you, Mr. Hubbell?

A. 42.

Q. Are you married, sir?

A. Yes.

Q. Any children?

A. Three.

Q. How old are they?

A. Fourteen, eleven and nine.

A. They are all attending school in Seattle.

A. They are all attending schol in Seattle.

[fol. 228] Q. Does your wife work?

A. No.

Q. Except take care of the children?

A. That's right.

Q. And has she ever worked during the time you have been married to her?

A. Only a short time during the war.

Q. What kind of work was that?

A. She worked as a dispatcher for a cab company and she owned and operated a small restaurant for one year.

Q. Not at the same time, different times?

A. No, different times.

Q. Did she ever belong to a union?

A. I am not sure. I think she was probably a member of the Waitress or Restaurant Workers' Union, there is a union, I think, by that name.

Q. And when she was with the cab company was she a

member of any union?

A. No.

Q. Has she ever had any difficulty with union people or union officials?

A. Not to my knowledge.

Q. As far as you know?

A. Not to my knowledge.

Q. Have you ever belonged to a union?

A. No.

Q. Now, before you went to school at St. Martin's what kind of work did you do?

A. I was teaching business subjects, the same business college, and doing accounting work.

[fol. 229] Q. I see. Did you take your schooling here in

the State of Washington?

A. Part of it. I finished my college work here in the State of Washington.

Q. University of Washington or St. Martin's?

A. St. Martin's.

Q. What degree did you take?

A. Bachelor of Arts in political science.

Q. Political science?

A. Yes.

Q. And you have had accounting work and you did/

engineering work?

A. I have not had engineering work as such. I have a minor in mathematics and I do have some understanding of the subject.

Q. I see. Has all your work been along that line ever

since you got out of school?

A. Yes.

Q. And before you went to St. Martin's, you did that at the same time you did the accounting work?

A. J did, yes.

Q. Have you ever served on a jury trying a criminal case before?

A. No.

Q. This is your second or fourth week?

A. This is my second week, sir.

Q. And I forgot to ask you this, this is one of the general questions that I addressed to the whole panel when we first started yesterday. You weren't here then, were you! [fol. 230] A. No.

Q. Have you or any member of your family or any close friend ever been involved in a criminal case in any way, that is, as a victim, as a witness, or in any manner what-

soever!

A. Not to my knowledge.

Q. And do you know of the—I don't know whether the Judge asked this or not. Do you know any of the witness' names?

- A. Not personally. I know of them.
- Q. Some of them?
- A. Yes.
- Q. But what you know of them is not going to influence your determination as to their veracity or it is not going to influence you at all in your judgment of this case?
 - A. No.
- Q. You don't have any feeling of animosity or feeling of special interest in any one of the witnesses that you do happen to know of?
 - A. I do not.
- Q. Have you done any accounting work for any organization, any labor organization of any kind?
 - A. No.
 - Q. Never been connected in any way with them?
 - A. I have not.
 - Q. Are you a CPA?
 - A, No.
- Q. Do you know any of the counsel here, do you know Mr. Burdell, Mr. Keough, or any members of Mr. Burdell's [fol. 231] firm?
 - A. I do not.
 - Q. Do you know Mr. Carroll, the Prosecuting Attorney?
 - A. I don't know him personally.
 - Q. You know of him!
 - A. Yes.
 - Q. And you don't know me or Mr. Smith?
 - A. No.
- Q. Or any member of the Prosecutor's staff as far as you know?

A. No.

Mr. Regal: Pass for cause.

Voir dire examination.

By Mr. Burdell:

- Q. Mr. Hubbell, what type of accounting work did you do?
 - A. It was general accounting for small businesses.
 - Q: Various types of small businesses !

A. Yes.

Q. Was it that you were not employed by one company but you were working as an accountant for them?

A. More or less on my own.

Q. Yes, and auditing or checking the books of the com-

A. There was no auditing involved, it was keeping the ledgers and making the tax reports and work of that nature.

Q. I see. Now, how long did you do that?

A. Oh, intermittently for perhaps four years.

Q. That was one of the types of accounting services where you go from one company to another and actually do [fol. 232] assorted bookkeeping and accounting work?

A. That's right, I had a definite arrangement with three or four different ones and it only involved a few hours a

week.

- Q. Then how long did you teach accounting?
- A. One year.
- Q. One year?

A. Yes.

Q. Now, I think you said you heard about this case. Have you heard considerable from time to time about the Teamsters' Union and about Mr. Beck? Have you heard discussions, newspaper reports, television reports, things of that sort?

A. Yes.

Q. And some of them, some of the things you have heard have been reports or discussions or assertions of a nature adverse to Mr. Beck, I take it?

A. Yes.

Q. Now, what impression or opinion, if any, was formed in your mind as a result of those discussions, what opinion exists there now as a result of these discussions?

A. Well,-

Q. Put it this way, have those assertions or claims in any way caused you to have any feeling whatsoever of bias or prejudice against Mr. Beck or against the Teamsters' Union?

A. Well, I don't know whether you could call it bias or prejudice or not. I have formed opinions. I do not approve of some of the practices which it seems has been carried on.

[fol. 233] Q. Well, now, you say you don't approve of the practices. Would your disapproval, do you think—

The Court: In reference, Mr. Burdell, to some—Mr. Burdell: I understand that, Your Honor. I should have corrected my statement.

Q. Mr. Hubbell, would your disapproval of some of these practices create or have they created any opinion in your mind which you think might require me to introduce some evidence to overcome in connection with this case?

A. I don't think so at all in connection with this case.

Q. Do you think that your disapproval—would you have to set aside this disapproval which you think you have in order to consider this case?

A. As far as this case is concerned, I don't think it would affect that at all.

Q. But you would have to set aside some feeling of dis-

approval1

A. Oh, I wouldn't say I wouldn't, but I don't feel that I would be impartial at all as far as the fact in this case is concerned. When I say that, I am considering the fact that there might—you know—when I say that I am leaving open the possibility there might be some unconscious feeling there but I don't really think there would be.

Mr. Burdell: Will the Reporter please read back the last

(The last answer was read by the Reporter.)

Q. Did you mean to say that you did not think you could be impartial?

A. I meant to say I thought I could be impartial.

[fol. 234] Q. That's right. Well, now, do you believe, Mr. Hubbell, that in being impartial you would be in a situation where we would have to demonstrate to you that some of these things that you have heard are wrong?

A. Well, I don't think it would enter into this case. I have formed no opinion whatever as far as this case is concerned. I don't think there would be any difficulty at

all in hearing the evidence as it is presented.

Q. Then you think as far as this case is concerned you could close your mind to everything else you may have

heard of which you disapprove and sort of consider it as never having been said or heard by you, is that correct?

A. Yes, sir, I think so.

Q. Have you ever expressed to anyone to your recollection any hostility or disapproval concerning Mr. Beck or concerning the Teamsters' Union?

A. Well, yes, I possibly have.

Q. And has that been recently?

A. No, I don't think so.

Q. I mean, has that been within the past few months?

A. Yes, it would have been within the past few months,

yes, the past year.

Q. And have those expressions of disapproval been made generally to friends or within your family or has it been somewhere else? Has it been in connection with your business or—

A. No, it hasn't been in connection with my business. It

would be in general discussion with friends.

Q. And as I understand it, those expressions of disap-[fol. 235] proval, would they relate to the policies of Mr. Beck as president of the International Brotherhood of Teamsters?

A. Well, I don't know whether you would call it policies or not. It would have to do with some of the—the way

some of the affairs have been conducted.

Q. I take it then your disapproval is based upon some reports that you have heard that the affairs of the union

have not been conducted properly, is that correct?

A. Well, some of the things that I have heard I tend to take with a grain of salt because it has been brought out, some of the things are stated in the newspapers and places like that, are very often biased. I try to consider it that way but just observing the general trend of events, the way things have transpired, I drew certain conclusions.

Q. Well, as I understand it, you think you can take some of the things with a grain of salt but yet you have reached certain conclusions. Now, have these conclusions that you have reached, or do they in any way relate to,—let's say assertions by the McClellan Committee, that funds have been misused by officers of the Teamsters' Union?

A. Well, I suppose they might have. They probably have

to some extent, yes.

Q. Well, of course, you understand that if you have reached a conclusion with respect to the assertions that funds have been misused you have reached a conclusion about the very things we are going to try in this case. Do you understand that, Mr. Hubbell?

A. I don't think it would necessarily be true, at least not [fol. 236] to my way of looking at it. This refers to a specific instance, a specific event on which evidence will be brought to bear and I don't think one will necessarily

follow from the other.

Q. What I am afraid of is that your thinking that, even though the State does not prove its particular case, that funds have been misused nevertheless in some other cases—

A. Maybe I can clarify myself.

Q. Surely.

A. No. There has been now—there has been a lot of adverse publicity and I don't know, of course I haven't actually formed a sure opinion as to whether or not funds have been misappropriated but it is pretty evident that some of the things that have transpired has brought a lot of adverse publicity to the Teamsters' Union and to the labor movement in general which I think is an unfortunate thing. I don't know, as I say, I haven't even formed a definite opinion as to whether or not funds have been misappropriated. That would still have to be proven. But there has been a lot of evidence brought out to indicate such could have been the case.

Mr. Burdell: I am going to ask that this juror be excused at this time.

The Court: Your present impression from all that has transpired here is such that there is something in those impressions that would require the Prosecutor or the defense to remove from your mind?

The Juror: I don't think so.

[fol. 237] The Court: Give special attention to this question. If you were in the position of the Prosecuting Attorney charged with the duty of prosecuting this action for the State, or if you were in the position of Mr. Burdell and his associates, charged with the defense of this charge,

of course the matter is of the utmost and extreme importance to you in such a position, and if you could look into the minds of the twelve jurors as you can look into your own mind, would you in their position be willing to accept a juror with twelve minds in your present state of mind?

The Juror: Well, looking into my own mind, yes, I would. However, if I were in Mr. Burdell's position I

can see why he might have some doubt.

The Court: Thank you for your answer, sir. You may be excused.

The Clerk will please call another juror.

The Clerk: William N. Stark, 8303 Juanita Drive, Kirk-

The Court: Please be seated, Mr. Stark. Were you present in court and sworn with the rest of the jurors?

The Juror: With the second group.

The Court: The second group today, is that correct?

The Juror: That is right.

The Court: Did you hear the Court's brief general explanation of the case and the introduction of the parties and counsel?

The Juror: I did.

[fol. 238] The Court: Did you hear and understand the questions that I posed to Mr. Morris?

The Juror: I think I did.

The Court: Would you, if you had been called upon then to answer those questions and now as you are, have answered yes to any of those questions?

The Juror: I would have answered yes.

The Court: To what question?

The Juror: I would have answered yes, that I have heard discussions of this case.

The Court: The first question about hearing of the case before?

The Juror: And I am quite surprised myself to find that on the question I would answer yes, to the question as to whether there might be some bias which would have to be overcome by one side or the other.

The Court: All right, sir, you may be excused.

The Clerk will please call another juror.

The Clerk: Cary N. Meyers, 1670 Magnolia Boulevard.

The Court: Mr. Meyers, were you present in court and sworn with the rest of the jurors?

The Juror: Yes, I was.

The Court: Did you hear the Court's general explanation of the case and introduction of the parties and counsel?

The Juror: Yes.

The Court: Did you hear and understand the questions that the Court posed to Mr. Morris today?

The Juror: Yes.

[fol. 239] The Court: Would you have answered any of those questions by raising your hand or in the affirmative?

The Juror: As others have said, I have read of the incidents involved but only in a very casual way and I don't

think that would make any impression on my mind.

The Court: There is an additional matter that I wish to go into, Mr. Meyers, not because the Court places any importance on it but because I wish you all to know. You and I have been personal friends for a number of years, is that correct?

The Juror: Yes, sir.

The Court: And I have disagreed with you on occasion on matters of principle where we have been associated, is that correct?

The Juror: Very seldom.

The Court: And you have disagreed with me on many occasions where we have been associated, is that correct?

The Juror: Yes, I don't remember, well, let it go at that.

The Court: That is correct, isn't it?

The Juror: Yes.

The Court: Is there any question in your mind that matters that I as the Court would instruct the jury as to the law, would you have any difficulty in accepting what I say to be the law?

The Juror: No.

The Court: Is there anything from the nature of this [fol. 240] case that would make you start into this trial with any bias or prejudice whatsoever, the kind of case it is?

The Juror: No.

The Court: Do you know of any reason in view of all that has transpired in your presence why you could not serve impartially and fairly in this case?

The Juror: I think the possibility is that my business is such that I may have a bias in the back of my mind. The Court: Gentlemen, you may inquire.

Voir dire examination.

By Mr. Regal:

Q. Mr. Meyers, your occupation, sir?

A. I am the owner of Bremerton Oil Delivery.

Q. And how long have you been in that business?

A. Twenty years.

Q. And prior to that, sir?

A. I managed the American Bank Building, then, American Building now.

Q. How long did you do that, sir?

A. I guess eight years.

Q. Prior to that?

A. Metropolitan Building Company.

Q. Same sort of work?

A. Yes, sir, building manager.

Q. Have you ever been a member of any labor organization?

A. No, sir.

Q. Do you know the defendant? [fol. 241] A. No, sir.

Q. Do you know the defendant's counsel?

Q. Do you know Mr. Carroll, the Prosecuting Attorney of King County?

A. Know him by sight.

Q. You don't know any of the members of his staff?

A. Here?

Q. Well, in other places, I mean other members of his staff that work for him?

A. Not intimately, no. I may know them casually.

Q. Yes, and you are married, Mr. Meyers?

A. Yes, sir.

Q. Children?

A. Three adult children.

Q. How old are they, sir?

A. Gosh, I can't answer that.

Q. Well, boys or girls, we will-forget the age. I forget the age of mine all the time and they are not old.

A. All right, we are even. 25, 28 and 31.

Q. Boyst

A. Boy, girl, and boy.

Q. Let's start with the 25-year-old.

A. Boeing Airplane personnel work. .

Q. That is the boy!

A. Yes.

Q. How long has he been there?

A. Oh, a year.

Q. What other types of work has he done?

A. Purchasing with Northern Commercial Company. [fol. 242] Q. Has he ever had any union affiliation or any union problems?

A. No.

Q. The 28-year-old, is that the girl?

A. Yes.

Q. Does she work?

A. No.

Q. Is she married?

A. Yes.

Q. What does her husband do?

A. He is health officer of Shasta County, California.

Q. Of course she lives down there. Now, there have been no problems there with unions or anything of that nature. Now the 31-year-old boy.

A. He is, I would say, the manager of my business.

Q. He does the work?

A. He does the work. I get the pay.

Q. That is the way it goes. Now, he is married?

A. Yes.

Q. He has children?

A. Yes.

Q. He has not had any union affiliation of any kind?

A. No.

Q. And he knows none of the parties here?

A. No.

Q. Are you presently the manager of the American Bank Building or American Building?

A. No.

Q. Your business is solely this Bremerton Oil?

A. Yes.

[fol. 243] Q. And you do have Teamster people working for you, don't you?

A. Yes.

Q. Driving your trucks?

A. Yes.

Q. Have you had any trouble with them at all, or any problems with your men because of the union affiliation?

A. No.

The Court: May I hear your answer, Mr. Meyers? The Juror: Excuse me. No.

Q. Thank you. When were you manager of the American Building, American Bank Building, what years were they, do you recall?

A. Well, up to '37. I went to Bremerton in '37.

Q. Up to '371

A. Yes.

Q. That is the building over on Madison Street?

A. Second and Madison.

Q. Second and Madison. It is now called the American Building but it was American Bank Building years and years ago?

A. That's right; that's right.

Mr. Regal: I will pass Mr. Meyers for cause, Your Honor.

Voir dire examination.

By Mr. Burdell:

Q. Mr. Meyers, you said something just before Mr. Regal continued his interrogation to the effect you thought because of the nature of your business you might be biased. [fol. 244] Did you really mean that you were biased or were you being hyper-cautious? Do you think you are biased or were you just being very careful?

A. I am afraid I am biased.

The Court: You may be excused. The Clerk will please call another juror.

The Clerk: George S. Gilbert, 123 West Highland Drive. The Court: Mr. Gilbert, were you present in court and sworn with the rest of the jurors today?

The Juror: Yes, sir.

'The Court: Did you hear the Court's brief explanation of the case and introduction of the parties and counsel?

The Juror: Yes, sir.

The Court: Did you hear and understand the questions that the Court asked Mr. Morris?

The Juror: Yes, sir.

The Court: Would you have answered any of those questions by yes or by raising your hand?

The Juror: Yes, only the first one.

The Court: That you have heard of the case before, is that right?

The Juror: Yes.

The Court: Any of the other questions?

The Juror: No, sir.

The Court: Is there anything from the nature or kind of case that this is that would lead you to start into this trial with any bias or prejudice whatsoever?

The Juror: No.

[fol. 245] The Court: Do you know of any reason why you could not try this case impartially?

The Juror: No, sir.

The Court: Gentlemen, you may inquire.

Voir dire examination.

By Mr. Regal:

- Q. Mr. Gilbert, what is your occupation, sir?
- A. Custodian to the Scottish Rite Temple.
- Q. How long have you been there, sir?
- A. About two months.
- Q. What kind of work did you do before that?
- A. I was custodian at the Eagles for two months.
- Q. How long!
- A. Two months.
- Q. Before that?
- A. I worked six months at Victoria Apartments.

Q. Six months at Victoria Hardware?

A. Apartments.

Q. Victoria Apartments. And before that?

A. Retired.

Q. And what did you retire from, sir?

A. I had a lady's ready-to-wear shop here in Seattle.

Q. What is the name of that?

A. Mills & Malan.

Q. How long were you in that business?

A. Ten years.

Q. And prior to that time what business were you in?

A. I had a store on Fifth and Pine, same kind of a store for about four years.

[fol. 246] Q. Have ou been in that sort of work during most of your working career?

A. No.

Q. Tell us what other types of work you have engaged in.

A. I had a gasoline station for several years but previous to that I went to sea as an engineer for quite a few years.

Q. Did you ever belong to a labor union?

A. Marine Engineers.

Q. That is the only one?

A. No, I belonged to the Building Maintenance Union, joined that when I took this custodian job, about a year ago.

Q. Nothing in those experiences that would tend to influence you here in a case of this nature?

A. No, sir.

Q. None whatsoever?

A. No, sir.

Q. One way or another?

A. No, sir.

Q. Have you served on a jury trying criminal cases before?

A. I served on a jury about 1940. I don't remember if we had any criminal cases or not.

Q. That was a different panel at a different time?

A. Yes.

Q. Nothing occurred at that time to tend to influence you in this case?

A. No, sir.

Q. Are you married, Mr. Gilbert?

A. No, sir.

[fol. 247] Q. Have you ever been married, sir?

A. Yes, sir.

Q. Do you have any children?

A. No, sir.

- Q. No children. All right. How long have you lived in the Seattle area?
 - A. Since 1918.
 - Q. And what is your home state?

A. Minnesota.

Q. Have you lived in any other states?

- A. I lived in Missouri a couple of years before I came to Seattle.
- Q. Now, have you or any member of your family or close friend or relative ever been involved in any fashion in a criminal case, either as a victim or witness or any other matter?

A. No, sir.

Q. And do you know any of the counsel here at the counsel table?

A. No, sir.

Q. Do you know Mr. Burdell's associates?

A. No, sir.

Q. I don't know whether I have named them or not. Did you hear me read Mr. Burdell's associates?

. A. I don't remember.

Q. I will read them to you and see if you know any of these people. Mr. William Ferguson, William Wesselhoeft, Phil DeTurk, or Dennis McFeeley?

A. No, sir.

Q. You don't know Mr. Carroll or any of his deputies? [fol. 248] A. No, sir.

Mr. Regal: Pass Mr. Gilbert for cause, Your Honor.

Voir dire examination.

By Mr. Burdell:

- Q. Mr. Gilbert, did you say, I didn't understand what you said was the location of the ladies' store.
 - A. 1305 Fifth Avenue.
 - Q. You owned that store, did you, for some time?
 - A. Yes, sir.
 - Q. How long did you own it?
 - A. Sold it two years ago.
 - Q. How long had you owned it?
 - A. About ten years.
 - Q. Did you operate it yourself?
 - A. Yes, sir.
 - Q. And manage it yourself?
 - A. Yes, sir.
 - Q. How many employees did you have in the store?
 - A. Three or four.
 - Q. Three or four!
 - A. Yes.
- Q. Did you have a particular employee to handle your bookkeeping and accounting or did you do that yourself?
 - A. I had an auditor, bookkeeper.
 - Q. Bookkeeper, and was that a regular employee?
- A. No, he just came in every week and figured up what it was.
- Q. He came in every week and handled all your books for [fol. 249] you, is that right?
 - A. Yes.
- Q. And you relied upon him to handle all of that and did not do it yourself?
 - A. Yes, sir.
- Q. Now, how long ago was it that you were a member of MEBA?
 - A. Last war.
 - Q. During World War II?
 - A. Yes.
- Q. And can you remember approximately when it was that—what did you do, take a withdrawal?

A. Yes, sir.

Q. Approximately when was that?

A. At the end of the war.

Q. About 1945 or-

A. Yes.

Q. Where did you join, did you join here in Seattle?

A. Yes, sir.

Q. I suppose you were not particularly active as a union member?

A. No, sir.

Q. Did you have any difficulties at any time with any of the officers of the union?

A. No, sir.

Q. Was your experience as a member of the union satisfactory as far as you were concerned at all times?

A. Yes, sir.

Q. And I take it then you have no prejudice against unions by virtue of that membership?

A. (Shakes head.)

[fol. 250] Q. What about the Building Maintenance Union? Do I understand that you joined that just recently?

A. Just recently, yes, sir.

Q. And was it within the last year, I think you said?

A. Yes.

Mr. Burdell: I think we will pass Mr. Gilbert, if the Court please.

Mr. Regal: Your Honor, could I ask one further ques-

tion of Mr. Gilbert?

The Court: You may.

Voir dire examination.

By Mr. Regal:

Q. You say you belonged to the Building Maintenance Union. Is that the name of it, sir!

A. I really don't know the name of it. The building-

Q. Building Service Employees' Union?

A. Yes.

Q. Who is the business agent of that union, do you know, sir?

A. I don't know.

Q. You don't know that. That is all. Thank you.

The Court: State's second peremptory challenge.

Mr. Regal: May I have just a minute, if Your Honor please?

The Court: Certainly.

Mr. Regal: The State will excuse Juror No. 8, Your Honor.

The Court: Step down, please, Mr. Arndt. The Clerk will call another juror.

[fol. 251] The Clerk: Myron G. Sanderson, 4212 Pasadena Place.

The Court: Mr. Sanderson, were you in court and sworn with the rest of the jurors today?

The Juror: Yes, sir, I was.

The Court: Did you hear the Court's brief explanation of the case and the introduction of the parties and counsel and the reading of the witness' names?

The Juror: Yes, sir.

The Court: Did you hear and understand the questions that I posed to Mr. Morris, the first juror?

The Juror: Yes, sir.

The Court: Would you have answered any of those questions that I asked Mr. Morris in the affirmative by yes or raising your hand?

The Juror: The first one, sir.

The Court: The first question that you have heard of the case before?

The Juror: Yes, sir.

The Court: Any of the other questions?

The Juror: Well, I am not too sure, but if you will ask me the question about could I be a fair juror, I will answer that one.

The Court: Do you feel that there is anything in the nature or kind of case this is that would prevent you from being a fair and impartial juror?

The Juror: No, sir, not this case.

The Court: Do you know of any reason at all from what you have heard of the questioning in the matter going on

[fol. 252] in the courtroom why you could not try this case fairly and impartially?

The Juror: Well, it dates back to 1943, sir. 1941, I-

Mr. Regal: Your Honor, I would rather the juror did not state a specific instance, just general.

The Juror: Okay.

The Court: Do you feel you now have some bias or prejudice one way or the other?

The Juror: Yes, sir, it started then and-

The Court: All right, sir. You may be excused. The Clerk will please call another juror.

The Clerk: Mrs. Cecile B. Wilson, 4623 50th Avenue South. Mrs. Wilson, is Cecile your own first name?

The Juror: Yes, it is.

The Court: It is time for the afternoon recess. Ladies and gentlemen of the jury in the box, you may now retire to the jury room. Court will now be at recess until 3:15.

(Recess.)

[fol. 253] The Court: Bring in the jury, please.

(Jury in the jury box.)

The Court: You may be seated.

Mrs. Wilson, were you in court and sworn with the rest of the jurors today?

A. Yes, I was.

The Court: Did you hear the Court's brief explanation of the case, the introduction of the parties and counsel, and the reading of the list of witnesses?

A. Yes.

The Court: And did you hear and understand the questions I posed to Mr. Morris?

A. Yes.

The Court: I am referring to the questions the Court posed rather than those by counsel?

A. Yes.

The Court: Would you have answered any of those questions in the affirmative by raising your hand?

A. Yes, I have heard of the case.

The Court: You have heard of the case before. The first question.

A. Yes.

The Court: Any of the other questions?

A. No.

The Court: Thank you. Gentlemen, you may inquire.

Voir dire examination.

By Mr. Regal:

Q. Mrs. Wilson, are you employed? [fol. 254] A. No.

Q. Have you ever been employed?

A. Yes.

Q. What kind of work did you do, ma'am?

A. Well, some sixteen years ago I worked in millinery.

Q. Millinery ?

A. Yes.

Q. Did you have your own shop?

A. Yes.

Q. Was that in town here?

A. Yes.

Q. What store, ma'am?

A. Hanlon and-

The Court: I didn't understand you.

A. Hanlon & Sjordal's factory.

Q. How long did you work there?

A. Six years.

Q. Were you a member of a union while you were there!

A. No.

Q. Is that the only employment you have had?

A. During the war I worked for a short while in children's clothes. That was factory work too.

Q. Children's clothes?

A. Yes.

Q. Was that a union job?

A. No.

Q. Was that here in Seattle?

A. Yes.

Q. What company was that, if you can recall? It is all right, it isn't too important.

[fol. 255] A. It wasn't a very reliable place. It was a

ort of a fly-by-night one anyway.

Q. They paid your salary, though?

A. Yes, but they held the check for a couple of days.

Q. How long did you work there?

A. About a year.

Q. And that is the extent of your employment then?

A. Well, I worked about three months down in the Coos

Bay area.

Q. What kind of work there!

A. Mode O'Day shop.

Q. Selling!

A. Yes.

Q. Was that a union job?

A. No.

Q. About three months down there!

A. Yes.

Q. That covers it?

A. Yes.

Q. All right. What kind of work does your husband do, Mrs. Wilson?

A. He is a Parke-Davis salesman.

Q. Parke-Davis!

A. Yes.

Q. How long has he been with that company?

A. Eleven years.

Q. Is he a pharmacist?

A. Yes.

Q. And has he done any other kind of work!

A. No.

[fol. 256] Q. As long as you have been married to him?

A. No.

Q. Do you have any children?

A. Two.

Q. How old are they!

A. Nine and ten and a half.

Q. They are both going to school here!

A. Yes.

Q. Have you served on a jury trying a criminal case before?

A. No, I haven't.

Q. Have you been on a civil case?

A. Yes.

Q. This is your second or fourth week?

A. Fourth week.

Q. And have you or any member of your family or close friend or relative ever been involved in any way in a criminal matter?

A. No, they haven't.

Q. That, of course, is victim, witness, or something of that nature. You have no experience of that kind at all!

A. No.

Q. Do you know Mr. Charles O. Carroll, the Prosecuting Attorney, or any of his deputies?

A. No, I do not.

Q. Do you know Mr. Burdell or any of his associates?

A. No.

Q. Do you know any of the witnesses from the list the Court read a little while ago?

A. No.

[fol. 257] Q. Is there any reason at all why you could not be a fair and impartial juror in this case?

A. No, I don't believe so.

Mr. Regal: Pass Mrs. Wilson for cause, Your Honor.

Voir dire examination.

By Mr. Burdell:

Q. Mrs. Wilson, can you tell me what your hasband did prior to the time he went to the Parke-Davis Company!

A. He worked at Witt's Pharmacy as a soda clerk.

Q. He wasn't a pharmacist then?

A. No.

Q. And was he going to school?

A. He was going to school while he was working there.

Q. Where did he go to school?

A. University of Washington.

- Q. Does he travel as a Parke-Davis salesman?
- A. Not for the last six years.
- Q. He is not traveling now!
- A. He has a Seattle territory.
- Q. There is no problem in this case—I don't think the Court asked you—but there is no problem about someone to take care of your children or anything of that sort in case you should be isolated here for a few days?
 - A. I would hope I could go home to take care of them.
 - Q. There is someone to take care of them, though?
 - A. My husband is home.
- Q. And is there someone to take care of them during the daytime and do whatever is necessary if you are not at [fol. 256] home in the evening?
 - A. Well, I don't know. I haven't ever had anyone take
- care of them.
- Q. You haven't made any arrangements yet to have them taken care of?
 - A. No.
- Q. You think you will be able to do that, to make some arrangements for their care if you are away for a few days?
 - A. Well, if it is necessary I could, I guess.
- Q. Now, Mrs. Wilson, you have heard us ask questions about having heard discussions and reports concerning the Teamsters' Union, and concerning Mr. Beck, have you not?
 - A. Yes.
- Q. And I take it that you probably have heard some such reports, am I correct?
 - A. Yes.
- Q. Were those radio reports, TV reports, newspaper reports? Did that include all reports of that sort?
 - A. Yes.
- Q. Taking the television first, did you observe the conduct of the so-called McClellan hearings in Washington, D. C. last summer?
 - A. Not very attentively.
- Q. Did you follow the newspapers concerning that? Did you read the newspaper reports concerning that?
 - A. No.
 - Q. Have you had discussions with anyone concerning this

case or concerning Mr. Beck during which time there were any claims or assertions made of a hostile nature toward [fol. 259] Mr. Beck?

A. No, I haven't.

Q. You haven't had any such discussions?

A. No.

- Q. Have you discussed in connection with these hearings or in connection with this case, have you had any discussions with your close friends or relatives, including Mr. Wilson, discussions concerning Mr. Beck or this case!

 A. No.
- Q. Have you yourself discussed any possibility of your service on this jury with any of the other members of the panel, the jury panel?

A. No.

Q. You say you have served about four weeks?

A. Yes.

Q. And I think you said on no criminal cases. Have you served through completely any civil cases?

A. Yes. Two.

Q. Two. Would you tell me again what your address was?

A. 4623 50th Avenue South.

Q. How long have you lived there, Mrs. Wilson?

A. About six years.

Mr. Burdell: I pass this juror for cause.

The Court: Defendant's second peremptory challenge. Mr. Burdell: May I have about one moment, Your Honor! The Court: Certainly.

Mr. Burdell: The defendant will excuse Mr. Wallace,

Juror No. 5.

[fol. 260] The Court: Mr. Wallace, will you step down, please? The Clerk will call another juror.

The Clerk: Edwin A. Hedman, Box 575, Bothell.

The Court: Mr. Hedman, were you present in court and sworn with the rest of the jurors?

A. Yes.

The Court: Did you hear the Court's explanation of the case and the introduction of the parties and the reading of the names of the witnesses?

A. Yes.

The Court: Did you hear and understand the questions that the Court asked Mr. Morris this afternoon?

A. Yes.

The Court: Would you have answered any of those questions by a yes?

A. Yes, sir.

The Court: Which ones?

A. The first one.

The Court: The first one, about having heard of the case before?

A. Yes.

The Court: Any of the other questions? Questions that the Court asked, I mean.

A. There was one more.

The Court: What subject matter was it about?

A. About work.

The Court: I can't hear you.

A. About work.

The Court: About work? What did you mean about work?

[fol. 261] A. To be obligated for work.

The Court: I am sorry. I didn't understand.

A. Obligation for work.

The Court: Obligations for work that you don't feel you can participate on the jury and sit on it during the time it might take, is that it?

A. Yes.

The Court: Where do you work, sir?

A. King Street Station.

The Court: What kind of work do you do?

A. Baggage man. On the mail dock.

The Court: The mail department? By whom are you employed?

A. The King Street Station.

The Court: By the railroad, do you mean, or the postal department?

A. The Great Northern.

The Court: The Great Northern and Northern Pacific Railroads?

A. Yes.

The Court: How long have you been on the jury panel?

A. Two weeks.

The Court: Gentlemen, you may inquire.

Voir dire examination.

By Mr. Regal:

- Q. Mr. Hedman, is that the way you pronounce that, sir! A. Yes.
- Q. Have you, any member of your family, or close [fol. 262] friends or relatives, ever been involved in any way in a criminal case? That is, victim or witness?

A. No.

Q. Nothing of that nature has ever occurred as far as you know, is that right?

A. No.

- Q. Do you know any of the counsel at the table or any of their associates?
 - A. No.
- Q. Do you know any of the witnesses that were named personally?

A. No.

Q. Do you feel you could be a fair and impartial juror in this case? Do you have some prejudice?

A. Yes, sir.

Q. You do have some prejudice?

A. Yes.

Q. That would take evidence to remove?

A. Yes.

Mr. Regal: Ask that the juror be excused, Your Honor. The Court: He may be excused. The Clerk will call another juror.

The Clerk: Pierre F. McLaughlin, 2148 North 61st. The Court: Mr. McLaughlin, were you present in court

and sworn with the rest of the jurors today?

A. Yes, sir.

The Court: Did you hear the Court's general explanation of the case and the introduction of the parties?

A. Yes.

[fol. 263] The Court: Did you hear and understand the questions that I put to Mr. Morris?

A. Yes, sir.

The Court: In answer to any of those questions that the Court put to Mr. Morris, would you have answered yes or raised your hand?

A. Yes.

The Court: Which ones?

A. The first one.

The Court: As to whether you have heard of the case before!

A. Yes, sir.

The Court: Any others!

A. The one regarding whether I could serve with impartiality to both sides. I have an opinion on the case.

The Court: You have a preconceived opinion as to the guilt or innocence of the defendant? It can be answered yes or no.

A. I don't believe I could be impartial, that is, serve with impartiality. Let's put it that way. I do have a preconceived opinion, yes.

The Court: You may be excused. The Clerk will call another juror.

The Clerk: Anna L. Hebert, 2349 North 59th.

The Court: Is it Miss or Mrs. Hebert?

A. Mrs.

The Court: Mrs. Hebert, were you present in court and sworn with the rest of the jurors today?

A. Yes, sir.

Q. Did you hear the brief explanation of the case and [fol. 264] the introduction of the parties and counsel?

A. Yes, sir.

Q. Did you hear and understand the questions that I put to Mr. Morris?

A. Yes.

The Court: In answer to those questions, would you have answered any of them yes?

A. The first one. I have heard of the case.

The Court: You have heard of the case before?

A. Yes.

The Court: Any others?

A. The last one. I have a preconceived impression or opinion. I don't believe I could be impartial.

The Court: From what does that preconceived opinion or impression come? From what you have heard here today?

A. No, from what I have read and heard and spoken of and heard on radio.

The Court: You may be excused. The Clerk will call another juror.

The Clerk: George B. Goff, Jr., 14907 Southeast 42nd,

Bellevue.

[fol. 265] George B. Goff, Jr., 14907 Southeast 42nd, Bellevue (whereupon, promising to true answer make to questions propounded to him touching upon his qualifications to act as juror, was duly sworn).

Voir dire examination.

By the Court:

- Q. Mr. Goff, were you present in court and sworn with the jurors today?
 - A. Yes, sir.
- Q. Did you hear the Court's general explanation of the case and the introduction of the parties and counsel?
 - A. Yes, sir.
- Q. Did you hear and understand the questions that I put to Mr. Morris?
 - A. Yes, I did.
- Q. Would you have answered any of those questions by saying yes?
 - A. Yes.
 - Q. Which ones, sir?
- A. The first, fourth, and the eighth or ninth, something like that.
- Q. All right. The first one is whether you have heard of the case before. You have, is that correct?
 - A. Correct.
 - Q. Which other questions?
 - A. The other one, I have served on a criminal case before.
 - Q. In this jury term?
 - A. That's right.
- Q. All right. Did you serve clear through the case? [fol. 266] A. Yes, sir.
 - Q. What nature of case was that?
 - A. It was a manslaughter case.
 - Q. What other question would you have answered yes?
- A. Well, I am not sure that I could truthfully answer an oath to your last question of complete impartiality. I

personally have no bias with Mr. Beck, but I don't agree with the union's principles.

The Court: Gentlemen, you may inquire.

Voir dire examination.

By Mr. Regal:

- Q. Mr. Goff, what is your occupation, sir?
- A. I am an engineer.
- Q. For what organization?
- A. Boeing Airplane Company.
- Q. How long have you been at Boeing's?
- A. Three years and nine months.
- Q. How old are you, sir?
- A. I am 31.
- Q. And are you married?
- A. Yes, sir.
- Q. Children?
- A. Yes, sir.
- Q. How many?
- A. Three.
- Q. How old are they?
- A. Three, six and nine.
- Q. And does your wife work other than taking care of the three, six and nine-year-old children?

 [fol. 267] A. Well, not at the present time, no.
 - Q. Has she ever worked, sir!
 - A. Yes, she did.
 - Q. What kind of work has she done?
 - A. She was a clerk at Frederick & Nelson's.
 - Q. And while she was there did she belong to a union?
 - A. Yes, sir.
- Q. Did she have any experience there with the union she belonged to that would tend to prejudice you against the defendant here in this case?
 - A. Well,—

- Q. Without explaining anything about it, just answer the question generally. If you say too much, maybe it will cause a little trouble here. Just tell us generally whether or not there is any prejudice because of that relationship?
 - A. Not because of hers, no.
 - Q. Not because of her experience with Frederick's?
 - A. That's right.
 - Q. Do you know which union she belonged to?
 - A. The Clerks', Retail.
- Q. The Retail Clerks. Do you know with whom they are affiliated?
 - A. No, I don't.
- Q. You don't know that, so there would be no connection as far as you are concerned with Mr. Beck and your wife's employment?
 - A. That's right.
- Q. Nothing occurred there that would cause you any feelings against the union or any union?

 [fol. 268] A. Nothing that occurred there, no.
 - Q. Not as far as she is concerned?
 - A. No.
 - Q. What work have you done other than that?
 - A. I was with the Maximum Security Agency.
 - Q. What is that?
 - A. That I am not able to divulge.
 - Q. Was that Federal work, for the Federal Government?
 - A. Yes.
 - Q. Were you in the service when you were with them?
 - A. No, sir.
- Q. You were a civilian employee. And how long have you lived in the State of Washington?
 - A. Three years and nine months.
 - Q. What is your home state?
 - A. Oklahoma.
 - Q. What other states have you lived in, resided in?
- A. Maryland, Virginia and Washington, District of Columbia.

Q. Those are places where you actually resided and lived?

A. That's right.

Q. Mr. Goff, you served on one other criminal case and that was the only other criminal case you served on?

A. That's right.

Q. Did anything occur during the course of that trial that would tend to prejudice you against a person charged with crime?

A. No, sir.

Q. Or anything that would tend to prejudice you against the State of Washington or its prosecuting officials?

A. No, sir.

- [fol. 269] Q. Do you have any personal animosity towards union officials as such?
 - A. Not as individuals.
 - Q. You have some feeling against labor unions?
 - A. That's correct.
- Q. And that is based upon personal experience that you had?
 - A. No, sir. Personal beliefs.
- Q. Just personal beliefs. It is a matter of philosophy with you?

A. That's right.

- Q. And you had no experience yourself and has any member of your family ever had an unhappy experience?
 - A. No, sir.
 - Q. It is just as you said before, a feeling that you have?

A. Yes.

Q. Does that render you incapable of being fair and impartial on the issue here as to whether or not the defendant appropriated money from this labor union to his own use!

A. I think not. I consciously would have to-

Q. Does your prejudice against labor unions or your prejudice against labor unions extend to the position that if a labor union was victimized by someone, in other words, \$1900 of their money was taken by someone—

The Court: I think the question is a little out of order, Mr. Regal.

Mr. Regal: Very well, Your Honor.

Q. You understand in this case, Mr. Goff, the Western Conference of Teamsters, a labor organization, is the victim?

[fol. 270] Mr. Burdell: If the Court please, I don't think—Mr. Regal: That is in the indictment, Your Honor.
The Court: Rephrase the question, Mr. Regal.

By Mr. Regal:

Q. What I am trying to get at, Your Honor, is whether or not this jury would be prejudiced to the extent that he would feel in his deliberations that it didn't make any difference whether a labor organization lost money in this manner, and the indictment alleges—

The Court: Would you answer that question?

A. My prejudice does not have anything to do with my thinking or weighing the facts.

Q. In other words, you could be a fair and impartial

juror to both sides in this case?

A. Yes.

Q. And you could view the evidence dispassionately and without prejudice? Objectively?

A. Yes, sir.

Mr. Regal: Pass Mr. Goff for cause, Your Honor.

Voir dire examination.

By Mr. Burdell:

Q. Mr. Goff, when was it your wife was a member of the Retail Clerks Union?

A. Approximately two years ago, as well as I can remember.

Q. And how long was she a member of that union?

A. About three months.

Q. That would have been about in 1955 or '547

A. That's right.

- Q. And did she ever attend any meetings of that union? [fol. 271] A. No, sir.
- Q. To your knowledge she never attended any meetings, is that right?

A. No, sir.

Q. She never participated in the activities or the affairs or the business of the union in any way?

A. No, sir.

Q. But she paid her dues, as I understand it?

A. That's right.

Q. And you object, or one of your objections to unions as I understand it, is that she had to in that particular job belong to a union and pay dues, is that right?

A. That's right.

Q. She apparently never went to any meetings, and she got this understanding from her employer?

A. That's correct.

- Q. But at no time during this period, you are quite sure, did she ever attend any of the meetings of the Retail Clerk Union?
 - A. I am sure of that.
- Q. Now earlier, in response to some of the Court's questions, you indicated that you—I think you said that you would find it difficult to be impartial because you did not agree with some of the principles of some unions or of all unions, I guess. Does that apply to all unions or just particular unions?

A. It applies to most of them, put it that way.

Q. And, of course, I take it that the—in view of the fact that unions are operated by people and consist of people, that that feeling of disfavor that you have would [fol. 272] apply to the people who operate and who were the officers of and who conduct the business of the union, is that correct?

A. As individuals I don't believe it would. I mean as individuals, they have different personalities like a corporation or a large firm.

Q. You mean you feel prejudiced toward them just in their capacity as union officials but not in any other

capacity!

A. That's right.

Q. And you know, of course, that Mr. Beck, who is the defendant here, is the President of the International Brotherhood of Teamsters?

A. Yes, sir.

Q. And do you think, going back to your answers to the judge's questions, do you feel that the prejudice or feeling that you have toward unions would in any way in this case put me as defendant's counsel on the defensive so that I would have to introduce some evidence to you to show that or to overcome the feeling that you have towards unions or towards Mr. Beck?

A. I don't believe so.

Q. You think-go ahead.

A. I try to—my job has always been to look at everything from the standpoint of fact alone. I don't believe there is

any bias that would creep in consciously anywhere.

Q. I am sure you would try to do that, but I have to be sure. You did express some partiality, I think, or some bias, and I have to be satisfied in my own mind you under-[fol. 273] stand that that won't affect your verdict or anything of that sort and I am wondering if—put it this way—if you feel that if you were in my position you would feel that if I had twelve jurors in your frame of mind, I would be in a position where I would have the laboring oar so to speak, some burden to overcome by the introduction of some evidence or persuading you in some manner of the defendant's innocence and of the defendant's innocence of some of these charges or some of these prejudices you have in your mind. In other words, am I going to have some burden here that I ought not to have?

The Court: I think, Mr. Burdell, the question involved unintentionally, I am sure, an expression of there being any possibility you have a burden of proving innocence, which on the contrary of this case, and the instructions of the Court will be giving the jury. I might ask you to reframe it.

By Mr. Burdell:

- Q. Yes. Mr. Goff, I think you said you have served on one criminal case?
 - A. That's true.
- Q. And you heard, I guess, the instructions in that case that the defendant is presumed innocent and that the burden is upon the State to establish the guilt of the defendant beyond a reasonable doubt. Do you recall that?
 - A. Correct.
- Q. And do you recall that Judge Revelle in his statements to you this afternoon said that that quantum of proof, that is the proof beyond a reasonable doubt, was a [fol. 274] far greater quantum of proof than the other proof which is necessary, which is a preponderance of the evidence. Do you recall that statement?
 - A. Yes, sir.
- Q. What I would like to find out is, do you believe you can, regardless of this impartiality or partiality which you feel you might have toward labor unions, regardless of that, do you think that you can decide this case on the theory that the burden is upon the State and not upon me is any way? In other words, if there were twelve jurors with your frame of mind or your state of mind, do you believe that those jurors would or could apply this presumption of innocence? Would I be satisfied that they would or would the burden be on me in some sense rather than upon the State, or are you not sure?
- A. Well, I am going to be very objective with myself. I wouldn't want to place an undue burden on anybody but at the same time I know I am prejudiced against unions

as a group. I don't consciously feel any animosity toward Mr. Beck. I think I could give a fair hearing to the case.

Q. Well, I gather that what you are saying then is, are you giving an affirmative answer to my question that if I were faced with twelve jurors in your state of mind I could be confident that they would—that the burden would not be on me but that those twelve jurors would and could conscientiously apply the presumption of innocence and the rule relating to reasonable doubt?

[fol. 275] A. Yes, sir.

Mr. Burdell: May I have just a moment? Pass this juror for cause.

[fol. 276] The Court: The State's third peremptory challenge.

Mr. Regal: Could I have just a moment, Your Honor please?

The Court: Certainly.

Mr. Regal: The State will excuse Juror No. 4, Your Honor.

The Court: Mr. Gilbert, please step down. The Clerk will call another juror.

The Clerk: Beatrice M. Tribou, 15516 12th Northeast.

The Court: Miss or Mrs. Tribouf

A. Mrs.

The Court: Were you present in court today and sworn with the rest of the jurors?

A. That's right.

The Court: Did you hear the Court's brief explanation of the case and the introduction of the parties and counsel?

A. Yes.

The Court: Did you hear and understand the Court's questions to Mr. Morris this afternoon?

A. Yes.

The Court: Would you have answered any of those questions that I put to him by raising your hand?

A. Yes, I have heard of the case.

The Court: Yes. That is the first question, that you have heard of the case before.

A. Yes.

The Court: Any other questions?

A. No, I don't believe so.

[fol. 277] The Court: Do you know of any reason why you could not try this case fairly and impartially?

A. I guess not.

The Court: Gentlemen, you may inquire.

Voir dire examination.

By Mr. Regal:

- Q. Mrs. Tribou, is that the way you pronounce that, ma'am?
 - A. That's right.
 - Q. Are you employed?
 - A. Yes, I am.
 - Q. What kind of work do you do?
 - A. I am purchasing agent for the Federal Government.
- Q. How long have you been with the Federal Government?
 - A. Twenty years.
 - Q. And you are Mrs. Tribou!
 - A. Yes, I am.
 - Q. What does your husband do?
 - A. He is a barber.
 - Q. Barroom!
 - A. Barber.
 - Q. Barber. Oh, I am sorry.

The Court: Speak louder, please.

By Mr. Regal:

- Q. If you would have talked louder, that wouldn't have happened. How long has he been a barber?
 - A. Thirty years.
 - Q. Does he work in Seattle?
 - A. Yes.
 - Q. Does he have his own shop?
 - A. Yes, he does.

[fol. 278] Q. Do you have children, ma'am?

- A. Grown children.
- Q. How old are they!
- A. 28 and 29.
- Q. Boys or girls !
- A. One of each.
- Q. What does the 28-year-old do?
- A. She is married and has two children.
- Q. That keeps her busy?
- A. That's right.
- Q. Has she ever done any work outside the home?
- A. Yes.
- Q. What kind of work did she do?

A She worked for the Army Engineers and she worked for the Bon Marche for a while.

Q. During the time she was a clerk for the Bon Marche did she belong to a labor union, if you know?

- A. I don't know.
- Q. You don't know of any difficulty she might have had in that capacity?
 - A. No.
- Q. Is that the only work she has done other than being a housewife?
 - A. Yes.
 - Q. The 29-year-old is a boy?
 - A. Yes. He works for Fentron Industries.
 - Q. Fentron Industries?
 - A. Yes.
 - Q. That is in Ballard?
 - A. Yes.

[fol. 279] Q. What kind of work does he do for them?

A. He has to do with the aluminum phase.

Q. Has he been there quite some time?

A. Four years.

Q. What work did he do before?

A. Automobile mechanic.

Q. As an auto mechanic, did he belong to a union?

A. Yes.

Q. Do you know anything of his union activities, whether he was active or inactive?

A. He was not active.

Q. Whether he had any trouble with them?

A. Not that I know of.

The Court: Excuse me Mr. Regal. It is time for the afternoon recess, for overnight. Ladies and gentlemen of the jury in the box and in the courtroom not yet called, I wish to instruct you at this time that you are not to discuss this case directly or indirectly among yourselves or with any person whatsoever, and I ask you to refrain from reading anything about the case or anything directly or indirectly connected with it or hearing or seeing anything of that nature in the overnight recess, except that if you feel that you need to make some arrangements in the event that you may be selected on the jury for being confined for some reasonable period of time and in those arrangements you need make reference to the case, you may do so. This is not to say that any of you are selected and will serve. It is to say that if you need to make any preliminary arrangements, you may do so. You will now be excused, ladies and gentlemen of the jury, to return in [fol. 280] time for the court session at 9:30 tomorrow morning.

(Whereupon, a recess was had until 9:30 o'clock A.M., December 4, 1957.)

December 4, 1957 9:30 o'clock A.M.

(The following occurred in the Court's chambers:)

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Burdell: Your Honor, I have two things to take up this morning. The first relates to Juror No. 11, Mr. Vallance, who was the man who said he thought he might have ulcers. We have learned through John's wife, John Keough's wife, who is employed by the telephone company—

The Court: What company?

Mr. Burdell: The telephone company, that Mr. Vallance is in the process of being removed from this position he has as instructor of teachers. I guess he is an instructor of instructors and we feel that he is probably going through some mental problem as a result of it because it is a system which he built up at the telephone company and now at his age he is being removed from it, we believe against his will or against his desire, and we think it is probably causing him some mental problems or worry and extreme disappointment and he may well, I think, have ulcers or mental problems as he stated.

Mr. Keough: I might point out that my wife went to this school about four or five weeks ago. I found this out last night. Last night my wife asked about the names of the jurors. She said of him, "I went to his school," and then she started to tell me about him. I thought we should [fol. 282] bring this out. I don't know if he can specifically pick her out or not, but she did go to his school and unbe-

knownst to me she did go to his school.

Mr. Burdell: We don't know of anything, at least as far as I know, anything about him other than the fact that I believe as a result of what John told me, he may rightly be ill physically and I think at least we should possibly ask him some more questions about his health condi-

tion, unless the Court is satisfied that his health is completely satisfactory. I would suggest that he be removed.

Now the other problem I have relates to Juror No. 5. Yesterday I passed him for cause. I would like to withdraw that and ask he be excused for two reasons. First, because I think his answers did indicate some serious doubt in his own mind as to whether or not he could impartially try the case. He definitely said he was prejudiced against labor unions. He went so far as to make a remark about having to pay for a job, referring to the fact that his wife had to join the union at Frederick & Nelson's. Secondly, we were faced vesterday and still are faced with the fact that we can't explore his background because he worked, as I understand it, for the National Security Agency and says he will not tell us what he did there. I do not know what the National Security Agency does but it is possible he may have investigated some labor unions or labor union activities which may result in some prejudice that he has not indicated and of course, unless the Court orders him to permit us to interrogate him a little bit, we are not able [fol. 283] to do so and I rather imagine under the circumstances the Court probably won't require him to answer questions concerning that work. As I understand it, he worked for the National Security Agency I think a little over two years. Respecting him, I do ask that he at this time be excused.

The Court: The prosecution's position?

Mr. Regal: Your Honor, I don't feel he has been shown to be prejudiced in this case and I can see where Mr. Burdell has some argument but I don't feel that is what the law contemplates as far as challenge for cause is concerned. You must show that the juror has some preconceived ideas or notions that would take evidence to remove and Mr. Burdell attempted to get that from the juror and he couldn't. Now whether something like that does exist and the juror isn't being completely honest about it, I don't know. It is my impression that the fellow is very conscientious, he is honest to a fault, and gets himself in sort of a predicament trying to be honest and trying to tell Mr. Burdell and me everything that is in his mind.

Mr. Burdell: There is one other problem about him that I should point out. He said his wife worked for the Retail Clerks' Union.

Mr. Regal: At Frederick's.

Mr. Burdell: While at Frederick's. She was a member of the Retail Clerks. He said he didn't know whether or not the Retail Clerks' Union was connected with the Teamsters or not. As a matter of fact, it is not.

[fol. 284] The Court: It is not?

Mr. Burdell: It is not.

Mr. Regal: I thought it was.

Mr. Burdell: That is true. Everybody thinks so. It is quite possible he will get that impression or has that impression. I am quite sure everybody feels that is true.

Of course, if he feels that is true, in effect he would be in a position where he feels that the money in this case was allegedly taken from his wife because of membership in that union, because as you know, the prosecution will make an attempt to prove these automobiles were paid for by what I think is referred to as per capita tax from the members and if it is a fact, of course, that the Retail Clerks were connected with the Western Conference and members of the Retail Clerks did pay per capita tax to the Western Conference, I think under one of our statutes he would be subject to challenge by us under those circumstances.

The Court: You didn't comment with respect to No. 11. Mr. Regal: I think the Court should inquire again as to the man's health, if he has some condition that he feels requires immediate medication based upon what Mr. Keough said about his precarious position at the telephone company, it might be advisable to excuse him, but if his health is all right today, I can see no reason for taking him off the panel. The mere fact that he may be bothered by some mental condition that he has not admitted in open court, probably that is the case with all of them. Every-[fol. 285] body has their problems. I am worried now about Saturday. I know we are going to work and I am awful upset about that.

Mr. Burdell: Our point is that the position made creates physical discomfort which will make it difficult for him to

deliberate comfortably.

Mr. Regal: It is like starting out on a long trip with a bad tire and a spare. We have the spare but don't want to use it. The alternate juror will be there to be used in the event he has some problem but I think everybody has stomach trouble, ulcers, because of nerves.

The Court: Well, after the examination of these two jurors yesterday, with respect to No. 11, not having had any previous health problems, expressed in his opinion, not having consulted a doctor, that he was suffering from the ordinary nervous tension that jurors suffer from when the question was asked by the Court and by counsel which I believe was entirely proper. I do think this being his difficulty, however, I will accede to the questions as to the Court inquiring how he feels today, if he has any health reasons in his mind why he could not be able to serve, only as it pertains as to whether he will or will not give proper attention to the case.

With respect to Juror No. 5, I think there was ample opportunity during the examination with respect to his answer about the National Security Agency, if that is the term he used, I felt at the time that the matter was explored by defendant's counsel and was dropped because [fol. 286] at the time Counsel himself felt it was probably fully explored because he answered concerning his work that he had to evaluate not in terms or something to the effect that he had to weigh the facts and the evidence and was trained to separate in a sense the wheat from the chaff. I do not know what line the Court would have drawn as to what questions he would have to answer. At the moment I am not familiar with any law that gives a juror or any former member of any kind of an agency the right to refuse to answer pertinent questions. Of course, I recognize there must be if the gentleman says so, some proclamation that prevents him from giving the details of some work he performed for the government, but as to what it called for him to do in general terms as to his capacity, his personality, his training, I thought it was quite fully covered in a sense by his answers yesterday. Perhaps defendant's counsel doesn't agree with me but I think it is within the realm of, not as a challenge to the juror since we do know in general terms what he did do, but it is more in the nature

of a sort of thing Counsel can use if he desires to challenge the juror peremptorily. It doesn't amount to a challenge for cause.

With respect to the matters concerning Juror No. 11, as related by Mr. Keough, the Court has appreciated this being brought to the attention of the Court and of the record, and is in the nature of I do not think any matter of challenge because indirect relationships crossing the paths of people and lawyers and their families is a common occur-[fol. 287] rence and I don't think influences jurors one way or another very often. This kind of information, the way in which it was determined, is readily available to counsel in this county who can any time they desire call for jurors, obtain names and addresses and investigate them if they so desire, and such matters can be, so to speak, uncovered if they are of any importance.

Where we are now, with the number of challenges remaining and the context of both of these matters, it is a fair situation to just inquire of No. 11 concerning his health at the present time and I would deny the challenge to No. 5

for cause.

Mr. Burdell: I think it would be proper then to advise the juror in some fashion, if he remains as a juror, perhaps assuming something that can be determined later, but in the course of the case or prior to the case, I think the juror should be advised that the Retail Clerks' Union is not part of the Teamsters' Union. I am satisfied under the statute if he is under the impression that the Retail Clerks is a part of the Teamsters, that he would be subject to excuse for implied—

The Court: I got the impression from the questioning

yesterday that no one knew whether it was or not.

Mr. Regal: That is right. The question was, do you know whether or not they are affiliated. He said no. His

wife no longer works for them.

The Court: I got the impression also that the examiners didn't know either, but I will permit you to ask a question of him concerning the subject of retail clerks.

[fol. 288] Mr. Regal: I don't think anything should be stated to the jury as a fact, he shouldn't be given that information unless Mr. Beck takes the stand. If he does he

can ask him, although I don't see what materiality that has. I have no objection if Mr. Burdell wants to question Juror No. 5 further along that line and he can ask a leading question in this fashion: You know, do you not.

Mr. Burdell: Yesterday he said he didn't know. As far as today is concerned, I wanted to be sure he didn't make

any inquiry.

The Court: The first thing we are to do is question No. 11. Then we will continue with No.—

Mr. Burdell: No. 4.

The Court: No. 4, by Mr. Regal.

Mr. Regal: Yes.

The Court: And then ask Mr. Burdell for further ques-

tioning of No. 5, whatever his name is.

Mr. Burdell: I wonder if it would be proper for the Court again this morning to ask the general question as to whether or not any of them since they have been interrogated individually by counsel have received any information or whether anything has come to their attention, whether overnight or during the day yesterday, which would change any of their answers or which would in their opinion make it difficult for them to try the case in question.

Mr. Regal: Yes, that is satisfactory with me, Your Honor.

The Court: All right.

[fol. 289] (The following occurred in open court, and in the presence of the jury:)

The Court: Please bring in the jury.

(Jury in the jury box.)

The Court: Please be seated. Ladies and gentlemen of the jury, I would like to ask all of you one general question this morning having to do with matters that may have occurred since 4:00 o'clock yesterday, if anything. The question is, have any of you since that time received any information or has anything come to your attention that would in any way change the answers to the questions by me yesterday and would prevent you from being a fair and impartial juror in this case? If so, please raise your hand.

I see no hands to the question.

Mr. Vallance, I would like to inquire of you today, how you are feeling physically?

Mr. Vallance: About the same as I did yesterday. I feel

all right in the day time.

The Court: Is there any question in your mind that you

are not physically all right?

Mr. Vallance: I don't think there is any question at the present time.

The Court: You feel all right today?

Mr. Vallance: Yes.

The Court: You may continue the questioning of Juror No. 4, Mr. Regal.

[fol. 290] Voir dire examination.

By Mr. Regal:

Q. Mrs. Tribou, I have forgotten whether I asked you some of the general questions that I directed to some of the other jurors. We call them general questions because when the panel comes in the box, before you came down, we addressed all twelve of them together. It doesn't mean it is a specific question to you now. Have you or any member of your family or relative or close friend ever been involved in a criminal matter in any way, either as a victim, witness, or some other manner, if you can recall?

A. My brother was the victim of a robbery and kidnap-

ping about twenty years ago maybe.

Q. Was that in this area?

A. Yes, it was.

Q. Were you here at the time?

A. Yes.

Q. Did you attend the trial?

A. No, I didn't.

Q. Did you know any of the facts or circumstances except the general facts and circumstances you are stating now at that time?

A. Well, I knew-

Q. You knew all the facts and circumstances at the time?

A. Well, yes.

Q. And without telling us what the outcome was, was there a trial regarding it?

A. Yes, there was.

Q. Without telling us the outcome of the trial, were you [fol. 291] satisfied with the outcome?

A. Yes.

Q. Did you have any feelings of irritation or agitation after the trial was over and everything was settled?

A. Not particularly.

Q. By not particularly you mean there is nothing in your mind that would tend to prejudice you one way or the other! By that I mean against the defendant or against the State!

A. No, it was an entirely different thing.

Q. Yes, but it is an unrelated crime and it has no relationship to this charge. Do you know either counsel for the defendant?

A. No, I don't.

Q. Do you know any of the attorneys in his firm?

A. No.

Q. You have heard the names I read yesterday regarding some of the attorneys in his firm and others that he is associated with?

A. I don't know them.

Q. Do you remember me reading the names of those?

A. Yes, I am sure.

Q. But none of them ring a bell !-

A. No.

Q. You don't know Mr. Carroll or any member of his staff?

The Court: What is your answer, ma'am?

A. No.

Q. Now have you served on a jury trying a criminal case before? I think I asked you that.

A. Yes. You didn't ask me, but I have.

[fol. 292] Q. What was the nature of that case?

A. That was a morals case.

Q. Did anything occur during the course of that trial that would influence you in a case of this nature?

A. No.

Q. You have no feelings or prejudice against a person charged with crime or against the State as a result of that case you sat on?

A. No.

Mr. Regal: Pass Mrs. Tribou for cause, Your Honor.

Voir dire examination.

By Mr. Burdell:

- Q. Mrs. Tribou, is it Tribou or Tribou?
- A. Tribou.
- Q. What agency of the government are you employed by?
- A. General Services Administration.
- Q. And how long have you been employed by GSA?
- A. Well, since its beginning. I was with one of the offices that formed this organization.
 - Q. Have you been employed in Seattle all of the time?
 - A. Yes.
 - Q. Where is your husband's business located?
 - A. It is out at 15545 15th Northeast.
- Q. Does he have any employees in his shop or does he operate it alone?
- A. He has operated it alone for two or three years, but now he has just taken on a man.
- Q. An employee. Neither your husband nor his employee [fol. 293] is a member of the union?
- A. My husband isn't. I don't know about the other man. He has only been a couple days there.
- Q. Do you have any feeling or prejudice or hostility towards unions or union officers?
 - A. No, not generally.
 - Q. Not what?
 - A. Not generally.
 - Q. Well, do you specifically in any way?
 - A. No, I don't believe so.
 - Q. I beg your pardon f
 - A. I don't believe so.
- Q. You don't believe so. Is there some doubt in your mind? Do you have any feeling of hostility or prejudice towards the Teamsters' Union or its officers?
 - A. I have never thought very highly about them.
 - Q. When you say you have never thought very highly

of its officers, I take it from that you mean you have some opposite feeling, you have some feeling of disapproval?

A. Yes.

Q. And that feeling of disapproval would include Mr. Beck who is the president of the union?

A. Yes.

Q. And having that feeling of disapproval, would it be difficult in any way for you to fairly consider the issues and the facts in this case in which Mr. Beck is a defendant?

A. I don't believe so. There is nothing personal.

Q. I beg your pardon?

A. I don't believe so because it is nothing personal.

[fol. 294] Q. You mean you don't know him personally, is that right?

A. That's right. I mean I have nothing-no personal-

no personal reason.

Q. Well, is your reason based upon information or assertions which have been made by other people and reports which you have received?

A. Yes.

Q. And these reports you have received are reports from people in discussions that you have had?

A. Yes.

Q. And in addition newspaper reports?

A. Yes.

Q. Television reports?

A. That's right.

Q. And you have accepted, I take it, some of them as being true?

A. Yes.

Q. And those things—by the way, have you yourself engaged in any discussions concerning Mr. Beck with respect to these matters you have heard?

A. What do you mean by "these matters"?

Q. Well, the matters that you had reference to, the discussions?

A. Well, over the years I suppose we have discussed him more or less now and then.

Q. And you have discussed it within the past few months?

A. Well, yes, I suppose.

Q. And would you have had discussions of that sort since you have been on the jury panel?

A. No.

[fol. 295] Q. Now the discussions that you have reference to, did they include at any time any statement by you indicating disapproval or resentment or hostility toward Mr. Beck!

- A. Not resentment or hostility.
- Q. Disapproval, though?

A. Yes.

Q. Did you read or hear by way of radio or television any of the charges or assertions made against Mr. Beck in connection with the McClellan Committee hearings?

A. Was that the Washington business?

Q. Yes.

A. Yes, we watched the television.

Q. Do you recall having heard some of the assertions or charges that were made?

A. Yes.

Q. And is it those charges or do those charges, are they included in the type of thing which you say has left some disapproval in your mind?

A. Well, I think that they would be included, yes.

Q. And did you watch the television at the time of Mr. Beck's appearance before the Senate Committee?

A. Yes.

Q. And you observed that he refused to answer questions?

A. Yes.

Q. And did that contribute, did that refusal contribute to your disapproval of Mr. Beck's conduct?

A. Not particularly, no.

Q. You say not particularly!

A. Yes.

Q. Well, do you mean by that you had already reached a [fol. 296] state of mind where nothing could add to the disapproval?

A. Well, I figured he knew he was going to be on trial.

He was protecting himself.

Q. Did you assume—I am wondering if by that answer you feel that his refusal to testify was based upon the

feeling that in his own mind he would be guilty of something?

A. Not necessarily.

Q. Not necessarily?

A. No.

Q. But you think there is that possibility?

A. Oh, sure.

Q. And in your own mind did you feel that his failure to testify created in your own mind some indication or implication that he might be guilty of something?

A. No, I don't think that.

Q. You feel that you are quite sure that his failure to testify didn't indicate to you in any way that he might be guilty of anything?

A. No.

Q. Now this feeling of disapproval that you have, Mrs. Tribou, would that in any way put the defendant or Mr. Beck in a position where in order to remove that disapproval and in order to have you deliberate quite dispassionately, the defendant would be under an obligation to undertake some burden of introducing evidence?

A. No, I don't believe so because we are trying one spe-

cific thing here.

Q. Are you under the impression that although we are trying one specific thing here, there may be some other [fol. 297] assertions of misconduct toward Mr. Beck that might be true?

A. Yes.

Q. And do you feel that the fact that there may be—that he may have engaged in other forms of misconduct could be completely ignored by you in considering this particular case?

A. I hope so.

Q. I beg your pardon?

A. I hope so.

Q. I do too. I want you to be really sure.

A. We are supposed to decide on one thing.

Q. Yes, that is true, and I just want to be sure. You indicate merely that you hope it will have no effect. I have to be sure and I think you ought to be sure, too. Are you completely satisfied in your own mind that the belief that

you have about other alleged misconduct would have no possibility of affecting your verdict in this case?

A. I am sure it wouldn't.

Q. I beg your pardon?

A. I am sure it wouldn't.

Q. And even if you believed that Mr. Beck may have engaged in some other type of misconduct at some other time, you can completely ignore that, is that correct?

A. Yes.

Q. Let me ask you this: Your belief that he has engaged in some other form of misconduct, that is based entirely on things you have heard? You have no personal knowledge, is that correct?

A. That is right.

[fol. 298] Q. You have never made any effort, have you, to formerly investigate or determine the truth of any of the assertions or charges that have been made, is that correct?

A. That is right.

Q. And in the television hearings that you said you observed, did you particularly with reference to those, did you make any effort to investigate or determine the truth of the assertions made there?

A. No.

Q. So that whatever feeling you have is based entirely upon this type of thing, television reports, newspaper reports?

A. That is right.

Q. Now did you in connection with the McClellan Committee hearings, do you recall assertions by members of that committee that officers of the Teamsters' Union had misused funds?

A. Yes.

Q. And is that one of the assertions that you believed to be true?

A. Yes.

Mr. Burdell: I ask that the juror be excused.

The Court: In regard to this matter, Mrs. Tribou, are your feelings in that matter directed towards or applicable to the defendant here?

A. Yes.

The Court: You may be excused. The Clerk will call another juror.

The Clerk: Arlene L. Pritchard, 11315 76th South.

The Court: Mrs. Pritchard!

[fol. 299] A. Yes.

The Court: Were you present in court yesterday and sworn with the rest of the panel?

A. Yes, I was.

The Court: Did you hear the Court's general explanation of the case, the reading of the indictment, and the introduction of the parties and the naming of the witnesses?

A. Yes, I did.

The Court: Did you hear and understand the questions that I asked Mr. Morris yesterday just after making the explanation?

A. Yes.

The Court: In answer to any of those questions, would you have answered them by saying yes?

A. Yes, I would.

The Court: Which ones?

A. The first one.

The Court: That you have heard of the case before?

A. Yes, and I also know a Donald McDonald. I believe that is one of the witnesses.

The Court: Donald McDonald?

A. Yes.

The Court: Donald D. McDonald?

Mr. Regal: He is a bookkeeper for the Western Conference of Teamsters.

A. No.

The Court: Any other questions that you would have answered yes?

[fol. 300] A. Also it would be terribly hard for me to stay on a closed jury because I have two small children.

The Court: What are your children's ages?

A. Three and six.

The Court: Have you ever been away for say five or six days from your children?

A. No, I haven't, not from both of them.

The Court: Do you now think it is impossible for you to make arrangements for them to be cared for for a reasonable length of time?

A. It probably wouldn't be impossible but it would be hard and I hate to impose on people.

The Court: In what way would it be hard?

A. Well, my husband sometimes works Saturdays and I don't know whether he could do the washing and ironing that has to be done, and the shopping and that sort of thing, and then my neighbor is taking care of my little boy now.

The Court: What arrangements do you make now during the day?

A. She watches him before and after school for me and we pick him up at 5:30.

The Court: The three-year-old, what arrangements do you have for him?

A. She is staying with my mother-in-law during the week but she has quite a few things on. I hate to tie her down too long. I imagine she could do it.

The Court: You are not employed outside the home?

A. No, I am not.

The Court: What is your husband's employment?

[fol. 301] A. He is assistant to the president at the Olympic Steel Works.

The Court: Do you live in your own home?

A. Yes.

The Court: Would the separation from your children, if you could make arrangements that would satisfy you, give you any concern or interfere with your considering matters that may be presented to you as a juror?

A. I would be concerned about them, especially not being sure who would take care of him on Saturday if my husband wasn't home.

The Court: Were you aware that jurors are possibly confined when you started service on your first day of this term?

A. Well, I knew over one night but I didn't realize—

The Court: I see. The formal and specific jury duty of course involves sacrifices on the part of every juror, both financial and otherwise. The problem of the judicial system in the courts is distributing amongst the citizens eligible for jury service those sacrifices so I am interested not in imposing upon you anything that is unfair considered in that general idea. Do you think that to serve on this jury might be I say unreasonable—or I might say a reasonable length of time, possibly, I am guessing, ten days or seven days or fourteen days, would be a financial or other personal burden to you to an extent that you think it would be greater than that imposed on other jurors with children of the age of yours?

[fol. 302] A. The same age as mine?

The Court: Yes, the same as yours.

A. Probably not the same age:

The Court: Probably not.

A. I do pay the baby sitter.

The Court: Is there anything else on that same subject matter you would like to call my attention to?

A. No, I don't think so.

The Court: Is there any reason from the nature of this case, the kind of case it is, a charge of grand larceny, why

you could not start into this trial as a fair and impartial juror?

A. No.

The Court: Is there any reason you know of at all why you could not be fair and impartial if you were to serve on this jury?

A. No, I don't think so, other than I would be anxious about the children at home.

The Court: Do you think that I should excuse you for that reason, thinking of all of the other people in your similar circumstances and all the matters I have mentioned?

A. Well, I would like very much to be excused.

The Court: I know that, but I think anyone with small children would like to be excused. That isn't quite my question. I don't wish to compel you without your free intention.

A. I don't know what to say, really. Yes, I think so.

The Court: You may be excused. The Clerk will call another juror.

[fol. 303] The Clerk: Peter Christian Petersen, Elliott Road, Route 3, Box 49, Bothell.

The Court: Be seated, sir. Mr. Petersen, were you in court yesterday and sworn with the rest of the jurors?

A. Yes.

The Court: Did you hear the Court's explanation of the case and the introduction of the parties and their counsel?

A. I did.

The Court: Did you hear the Court's reading of the list of witnesses?

A. Yes, sir.

The Court: Did you hear and understand the questions that I asked Mr. Morris yesterday?

A. Yes, the first one.

The Court: Which ones would you answer yes?

A. Well,—

The Court: The first one you say?

A. Yes, the first one.

The Court: What others, if any?

A. I wouldn't make my mind up exactly what to answer to the others at the time I heard the case first.

The Court: I can't hear you.

A. I say I didn't make my mind up to the other ones.

The Court: Is there any reason because of the nature of this case, the kind of a case that it is, why you could not start into this trial without any bias or prejudice whatsoever?

A. No, sir.

[fol. 304] The Court: Considering all the matters that you have heard while sitting histening to the questions made, is there any reason why you could not try this case fairly and impartially?

A. No, sir.

The Court: Gentlemen, you may inquire.

Voir dire examination.

By Mr. Regal:

- Q. Mr. Petersen, what kind of work do you do, sir!
- A. I am a stonemason contractor.
- Q. Stonemason?
- A. Yes.
- Q. And retired?
- A. No, I still do.
- Q. I didn't hear what you said. You said stonemason and something else.
 - A. Contractor.
- Q. Contractor. All right. Are you in business for your-self?
 - A. Yes, sir.
 - Q. How long have you been in that business?

A. All my life. I started that trade when I was fourteen.

Q. Where did you start stonemason work?

A. In Denmark. Copenhagen.

Q. When did you come to this country?

- A. I came here about around '29, and I come from anada.
 - Q. When did you leave Denmark?

A. Oh, a long time since. It was 1912.

Q. And you went to Canada. How long did you stay in Canada? Until '29, is that right?

[fol. 305] A. Yes.

Q. You did the same kind of work there!

A. I am a general contractor and I did a lot of big jobs.

Q. You did a lot of other jobs besides stonemason?

- A. I took a whole building. I done a lot of wholesale houses.
- Q. Did you come from Canada to Seattle, Washington!

A. Yes, sir.

Q. This has been your home ever since?

A. Yes.

Q. When you came to Seattle did you start right in with this kind of work?

A. Yes, I start right out by myself.

Q. In your own business?

A. Yes.

Q. Have you ever belonged to a labor union during the period of your working life?

A. I belong right now.

Q. To the stonemasons' union?

A. Yes.

Q. What is the name of that union?

A. The Bricklayers, Stonemasons & Builders Union.

Q. You have been a member of that union for how long?

A. About forty years.

Q. Are you an active member in this organization?

A. I am sorry to say I don't go very often.

Q. You don't go to the meetings very often?

Q. Have you ever held an office in that organization?

A. No, I have not.

[fol. 306] Q. Mr. Petersen, are you married?

A. Yes, sir.

Q. And does your wife work?

A. No, she never works.

Q. Has she ever worked?

A. No, not in the time I knew her.

Q. Since you married her!

A. No.

Q. Except housework?

A. Yes.

Q. You make her do the housework?

A. Yes.

Q. Do you have children?

A. Three.

Q. How old are they?

A. Between 30 and 40.

Q. Boys or girls?

A. Two girls and one boy.

Q. What do the girls do? Are they employed?

A. Well, the girls, one of them, she works in the doctor's office here in Seattle.

Q. Has she always done that kind of work?

A. No, she was supposed to be a school teacher. She went to college and she got married.

Q. And she quit school teaching then?

A. I don't think she ever started. She just went through college and then she got married.

Q. How about the other girl?

A. She is teaching down in Berkeley, California at the University.

[fol. 307] Q. Teaching down at Berkeley?

A. Yes.

Q. And the boy!

A. Well, the boy, he is something I don't approve of because I don't drink. He has a bar or saloon in Bremerton and I guess somebody has to do it.

Q. Does he run the organization? Is it a beer parlor?

A. I don't know. I don't pay very much attention to it because I never go there.

Q. You don't approve of his business so you don't contact him very much?

A. Oh, yes, I like him. He is a wonderful man.

- Q. But you don't talk to him about his business?
- A. No, no.
- Q. Is it in Seattle here?
- A. No, this is in Bremerton.
- Q. In Bremerton?
- A. Yes.
- Q. Has he done any other kind of work prior to this?
- A. My boy?
- Q. Yes.
- A. Well, he was in the real estate business before he got that.
 - Q. Salesman?
 - A. Yes.
 - Q. And does that pretty well cover it?
 - A. That is all he does.
 - Q. Real estate, and then went into this tavern business?
 - A. Yes.
 - Q. Now are the two girls married?
- [fol. 308] A. No, that one down in California isn't.
 - Q. That one in Seattle is?
 - A. That's right.
- Q. That's right; she got married and never went to teaching. What does her husband do?
 - A. He is working for the school.
 - -Q. For the School Board?
 - A. Yes.
 - Q. What does he do?
 - A. Janitor.
 - Q. What school?
 - A. I do not know.
 - Q. How long has he been with the School Board?
 - A. He hasn't been there so long. About three years.
 - Q. What did he do before that?
 - A. He worked for Buick, the automobile company.
 - Q. What is his name?
 - A. Lee.
 - Q. Lee!
 - A. Yes.
 - Q. What other kinds of work has he done?
 - A. You mean for the automobile company?
 - Q. Well, prior to that?

A. I don't think he did anything. He has done that for

a long time.

Q. Has there ever been any disagreement or problems in your family with your children or in-laws, your son-in-law, regarding unions or union activities?

A. No.

Q. You have no problems there at all? [fol. 309] A. No.

Q. You have no prejudice in a case of this nature one way or the other?

A. No, sir.

Mr. Regal: Pass Mr. Petersen for cause, Your Honor.

Mr. Burdell: Before I interrogate Mr. Petersen, Your Honor, although it isn't the exact time, I wonder if I could have between a five and ten minute recess to consult with Mr. Begal about a matter.

Mr. Regal: I have no objection, Your Honor.

The Court: In order to expeditiously handle the matter, the Court will accede to the request.

Ladies and gentlemen, you may retire to the jury room.

Mr. Burdell: Thank you, Your Honor.

The Court: Court will recess for five minutes.

(Recess.)

The Court: Bring in the jury, please.

(The following proceedings were had in the presence of the jury.)

Voir dire examination.

By Mr. Burdell:

Q. Mr. Petersen, in connection with your membership in the union, have you had any experience at all which would make you in any way prejudiced toward union officers?

A. No, sir, not a thing.

Q. And have you as a result of hearing reports or reading [fol. 310] newspapers, any feeling in your mind of prejudice toward Mr. Beck?

A. No, sir.

Mr. Burdell: Pass Mr. Petersen for cause.

The Court: The defendant may specifically examine Juror No. 5 with reference to the Retail Clerks matter.

Voir dire examination.

By Mr. Burdell:

Q. Mr. Goff, yesterday I asked you if you knew whether or not the Retail Clerks Union was a part of the Teamsters' Union and I think you said you had no knowledge on that?

A. That is right.

Q. Is that still correct? You have received no information since then which would give you any knowledge on that

score at this point, have you!

A. No. Since we have been talking about it, I remember going down to the hall, taking my wife down where she took out her membership, and I think the Teamsters Union is located in the same place.

Q. Are you under the impression at this point that the Retail Clerks' Union is in any way affiliated with the Team-

sters' Union?

A. I would judge from its location that it must be in some form.

Q. And, Mr. Goff, you are aware, are you not, I guess we discussed this yesterday, but this is a matter in which Mr. Beck is charged with misuse of Teamsters' Union [fol. 311] funds or an affiliate of the Teamsters' Union. You are aware of that situation, are you not?

A. Yes.

Q. So that if you had the belief that the Retail Clerks' Union is part of the Teamsters' Union, you would understand that this case involves misuse of funds which were or may have been contributed to the Teamsters' Union by members of the Retail Clerks' Union?

A. I hadn't thought of it in that way, but I guess that

would be true.

Mr. Regal: Your Honor, L'didn't hear that last statement Mr. Burdell made. I think it contained erroneous material.

Mr. Burdell: Let's have the Reporter read it.

(The last question was read aloud by the Reporter.)

Mr. Burdell: I think under 444.180, subsection 4, Mr. Goff would have to be excused.

The Court: The prosecution may if it desires examine Mr. Goff on the same question.

Voir dire examination.

By Mr. Regal:

- Q. Mr. Goff, you have no knowledge as to whether or not the Betail Clerks is a member of or is affiliated with the Teamsters' Union?
 - A. Nothing that I could swear to except by supposition.
- Q. You had the feeling because merely when you took your wife down to pay her dues, you dropped her off at a building that was the Teamsters' building? [fol. 312] A. Yes, that was the building.
- Q. You don't know whether that building is used by other labor unions that are not affiliated or not to

A. That is right, I do not know.

Q. You have no firsthand knowledge at all on that score as to whether there is an affiliation between the Retail Clerks and the Teamsters?

A. I can't remember any instance that would tie them

together.

Q. Do you have a belief now that it might be or thatrather, it might be but that it is connected in some fashion with the Teamsters' Union?

A. I do at the present time, during the last fifteen min-

utes.

Q. Mr. Burdell construed that thought to your mind by some of his questions?

A. That is right.

Q. You never had any feeling like that before?
A. No.

Q. As a matter of fact, if you knew there was no affiliation you would cease to have that belief?

A. That is right.

Q. That belief has been instilled in your mind by questions asked by Mr. Burdell?

A. That is right.

Mr. Regal: I would have no objection, Your Honor, if Mr. Burdell wanted to inform the juror of the state of facts.

The Court: He may do so.

Mr. Burdell: I guess we can stipulate there is no connec-[fol. 313] tion at all between the Retail Clerks' Union and the Teamsters' Union except that they do have offices in the same building.

The Court: Has there ever been such a connection?

Mr. Burdell: There has never been any connection.

The Court: Any further questions?

Mr. Regal: No, Your Honor. The Court: Mr. Burdell?

Mr. Burdell: No, I don't have any.

Mr. Regal: Is Mr. Burdell's challenge now before the

The Court: The challenge is before the Court. It will be denied. Defendant's third peremptory challenge.

Mr. Burdell: Just a moment, Your Honor. The defen-

dants will excuse Juror No. 3, Your Honor.

The Court: Juror No. 3. Please step down. The Clerk will call another juror.

The Clerk: Lloyd F. Allen, 10452 Northeast 113th, Kirk-land.

The Court: Mr. Allen, were you present in court yesterday and sworn with the rest of the jurors?

A. Yes, I was.

The Courte Did you hear the Court's brief explanation of the case and the introduction of the parties and counsel?

A. Yes.

The Court: Did you hear the Court's reading of the list of witnesses?

[fol. 314] A. Yes.

The Court: Did you hear and understand the questions I asked the juror, Mr. Morris, yesterday?

A. Yes.

The Court: In answer to any of those questions I asked him, would you have answered them yes?

A. The first one.

The Court: That you heard of this case before?

A. Yes. I think it was about the fourth one, too, about being impartial. Due to events that have transpired in the past to me personally, I feel I couldn't be impartial.

The Court: Do these matters concern your membership or association with some union of some kind?

A. Yes.

The Court: You say that have affected you personally?

A. Yes.

The Court: Would it take evidence on behalf of either party to remove that impression from your mind?

A. There is no connection with this case in particular with the events in the past.

The Court: Do you now relate your impression to this defendant in this case?

A. No.

The Court: Gentlemen, you may inquire.

Voir dire examination.

By Mr. Regal:

Q. Mr. Allen, what kind of work do you do, sir?

A. Supervisor, Boeing Airplane Company.

[fol. 315] Q. How long have you been at Boeing's?

A. Almost 17 years.

Q. And are you a member of the Aeronautical Mechanics' Union?

A. I was, yes.

Q. You were, but as a supervisor you are not at the present time?

A. That is right.

Q. Were you active in that union?

A. I was never an officer of that union, no.

Q. You were an active member, went to meetings?

A. I attended some meetings, yes.

Q. During the period of time that you were at Boeing's and in the past—what I am trying to do, I am stumbling, I realize that, but I am trying to word it this way so that we don't go into specific instances and say things we shouldn't, you and me both. This feeling of prejudice or animosity, can we describe it as that?

A. Partly, yes.

Q. That is directed against Mr. Beck and the Teamsters' Union?

A. Yes.

Q. And do you feel that—there was one very important question that the Court asked as a general question and you didn't say that you would have answered that in the affirmative but that was the question, if you were in Mr. Beck's position, or in my position, would you want twelve jurors in your frame of mind trying the case?

A. No.

[fol. 316] Mr. Regal: I ask that the juror be excused, Your Honor.

The Court: You may be excused, sir. The Clerk will call another juror.

The Clerk: Joyce Waddell, 1627 72nd Southeast, Mercer Island.

The Court: Is it Miss or Mrs. Waddell?

A. Mrs. Waddell.

The Court: Mrs. Waddell were you in court and sworn with the rest of the jurors yesterday?

A. Yes, I was.

The Court: Did you hear the Court's general explanation of the case and the introduction of the parties?

A. Yes.

The Court: Did you hear and understand the questions I asked Mr. Morris yesterday?

A. Yes.

The Court: Would you have answered any of those questions by a yes?

A. Yes, at least two of them.

The Court: Which ones?

A. That I have heard of the case and I have an opinion formed and I don't think I would be a fair juror.

The Court: You may be excused.

A. Thank you.

The Court: The Clerk will call another juror.

The Clerk: Robert N. Moe, 4253—145th Southeast, Bellevue.

The Court: Mr. Moe, were you present in court and [fol. 317] sworn with the rest of the jurors yesterday!

A. Yes, I was.

The Court: Did you hear the Court's explanation of the case generally and the introduction of the parties and counsel?

A. Yes, I did.

The Court: Did you hear the Court's reading of the list of witnesses?

A. Yes, I did.

The Court: Did you hear and understand the questions I asked Mr. Morris yesterday?

A. Yes. 0

The Court: Would you have in response to any of those questions, have answered them by a yes?

A. Yes, I would have the first one.

The Court: That you have heard of this case before?

A. Yes.

The Court: Yes. All right. Any others?

A. Three things came to my mind last night. One, I went back to my office and went through our expiration card files and I find Mr. Beck's son does have some insurance business through my firm. I also know that Mr. Beck signed my diploma at the University, this Mr. Beck.

Mr. Regal: Your Honor, I feel the juror shouldn't state

specific reasons why he might be influenced.

The Court: That is well taken. The question I want to know is; is there presently today any impression remaining in your mind from matters you mentioned which would [fol. 318] require evidence by either side to remove?

A. No.

The Court: Is there anything about the nature of the case here, the charge of grand larceny, that would prevent you from starting into this trial without any bias or prejudice?

A. No.

The Court: Now considering all of the matters that occurred here in court in your presence and the questions that have been asked by the Court, particularly, and the questions asked by Counsel, do you have any reason whatsoever now to feel that you could not try this case fairly and impartially?

A. No.

The Court: Gentlemen, you may inquire.

Voir dire examination.

By Mr. Regal:

Q. Mr. Moe, what work do you do, sir?

A. I am an accountant at D. K. McDonald & Company.

Q. Are you a CPA, sir?

A. No, I am not.

Q. You took your accounting work at the University of Washington?

A. Yes, I did.

Q. When did you graduate, sir?

A. 1950.

Q. Are you married, Mr. Moe?

A. Yes.

Q. Do you have children, sir? [fol. 312] A. Yes.

Q. How many!

A. Two.

Q. How old are then !

A. Two and four

Q. Does your wife work!

A. No, she does not.

- Q. Has she ever worked while you have been married to her?
 - A. Yes, she has.

Q. What kind of work has she done?

A. School teaching and also working at the University.

Q. In the office out there?

A. Yes.

Q. What teaching has she done? Was it in this area?

A. Yes, just briefly in Portland and over in Issaquah.

Q. Grade school?

A. Junior High.

Q. Junior High. How long have you been with D. K. McDonald?

A. I am in my fourth year.

Q. You went there after you came out of school?

A. No, four years after, or three years.

Q. What did you do in the interim.

A. I was the manager of the Students Cooperative at

the University of Washington.

Q. Now the fact that you carry insurance on the defendant's son is not going to have any effect on your verdict in this case, is it?

A. None whatsoever.

Q. Your firm might even carry insurance on Mr. Burdell [fol. 320] or on me? You didn't check the records on that?

A. It is quite possible. I couldn't get through them that quick.

Q. You don't know the defendant personally?

A. No.

Q. Do you know Mr. Burdell or any of his associates personally?

A. No.

Q. Mr. Carroll or any of his deputies?

A. No.

Q. You have heard of some of the people, have you not?

A. Yes, since.

Q. Without specifying, do you know any of the witnesses

that were named personally?

- A. When I was at the University Kiwanis Club there was a fellow by the name of Logan, and I think his name was Lutz.
 - Q. That is Logan Lutz. He is an accountant?

A. I don't know.

Q. He is an older man; he is not your age?

A. I can't tell you just how old he was or anything. It has been three years.

Q. You just knew and met him once, is that right?

- A. He would be at meetings. There were about 130 members.
- Q. He is an accountant so it is possibly the same man or maybe a relative of his?

A. That is possible.

Q. That is not going to influence you one way or another? You wouldn't accept his testimony more readily than anyone else's merely because of your acquaintanceship there? [fol. 321] A, No.

Q. How long have you lived in this area, Mr. Moe?

A. I was born in the State of Washington.

Q. And you went to school, all of your schooling was here in the State of Washington?

A. Yes.

Q. Have you ever lived in any other state for any period of time other than when you were in the service?

A. No.

Q. And your wife, was she born here too?

A. She was born in North Dakota.

Q. Has she lived in any other states?

A. Briefly in Oregon and then in Washington.

Q. How old are you, Mr. Moe?

A. 36.

Q. Are your parents alive?

A. Yes.

Q. What does your father do?

A. He is an invand in a rest home.

Q. Your mother, is she employed?

A. No.

Q. What kind of work did your father do?

As He worked for a warehouse firm in Wenatchee.

Q. Was he a member of any union?

A. No!

Q. Have you ever had any connection with a union in

any way t

A. I think I had a work permit prior to the war in Bremerton for about three months.

[fol. 322] Q. This experience you had there probably would not influence you one way or another in a case of this nature?

A. No.

Q. At the present time there is no problem at all, no question in your mind that you couldn't be fair and impartial in this case?

A. That is true.

Mr. Regal: Pass Mr. Moe for cause, Your Honor.

Voir dire examination.

By Mr. Burdell:

Q. Mr. Moe, in your accounting work can you tell me in a general way what type of accounting you do?

A. Yes. I have accounts receivable and I have credit

and commissions and I also keep accounts.

Q. Is your accounting work done manually or do you use—

A. We have machines.

Q. —machines. I think you said something about Mr. Beck having signed your diploma. Is that when you graduated from the University of Washington?

A. Yes.

Q. When you graduated. That is when he was a member of the Board of Regents?

M

A. Yes.

Q. You mentioned that fact, but I don't think Mr. Regal asked you about it. That fact, I take it, would not affect your verdict one way or another in this case?

A. No:

Q. Was there something else you had in your mind? You don't have to state it necessarily, or probably you shouldn't, [fol. 323] but I think you were about to mention a third thing. Whatever it is, is there any possibility that that might affect your verdict one way or another?

A. No, I can't think of it right now. I just wanted to be

fair and tell everybody everything.

Q. Everything we might be interested in?

A. Yes.

Q. Whatever it is, you don't think it would affect your verdict?

A. No.

Q. I assume you have followed reports in the newspapers and on television concerning Mr. Beck's problems with the McClellan Committee?

A. Yes, I have.

Q. And you have heard assertions and charges made by members of that committee in the course of the hearings?

A. Yes, I did.

Q. Let me ask you this. Would you accept those assertions as true in the sense that you now have any belief in your mind which would affect your consideration of this case in any way?

A. No, I do not.

Q. Did you observe the television proceedings at the time Mr. Beck appeared before the committee?

A. If they would come on at news time I might have and

if I was watching television, it is quite possible I did.

Q. You don't recall any specific instance?

A. I don't recall specific instances.

Q. You think I can be satisfied, Mr. Moe, that if I had twelve jurors like you, I would have an impartial jury?

A. Yes, I think you could.

[fol. 324] Mr. Burdell: I will pass Mr. Moe.

The Court: The State's fourth peremptory challenge.

Mr. Regal: May I have just a moment, please, Your Honor?

The Court: You may.

Mr. Regal: The State will accept the jury, Your Honor. The Court: Defendant's fourth peremptory challenge. Mr. Burdell: The defense will excuse No. 11, Mr. Val-

lance.

The Court: Mr. Vallance, will you step down, please? The Clerk will call another juror.

The Clerk: Charles Hickling, 17 Enetai Drive, Bellevue.

Mr. Regal: Would you spell the address, please?

Mr. Hickling: E-n-e-t-a-i.

The Court: Be seated, sir. Mr. Hickling, were you present in court and sworn with the rest of the jurors yesterday?

A. No, I wasn't.

The Court: Will all of the jurors in the panel who came to the courtroom today please stand. I see all such jurors are occupying the first two rows. Will you please be seated. Are there any among you who were at any time previous to today present in this courtroom during the trial of a case entitled State v. Dave Beck, Jr. 1 If so, please stand. This is the case of State v. Dave Beck, Jr. Were you [fol. 325] present in this courtroom?

Voice: I was in for about fifteen minutes in the after-

noon.

The Court: You may be excused, sir, and return to the Department of the Presiding Judge. May I have your name, sir?

Voice: Arthur Neimier.

The Court: Will the jurors who have not yet been sworn, all of those in the courtroom who came down today, please stand, raise your right hands, and be sworn.

(Prospective jurors sworn.)

The Court: Please be seated. I see that it is one minute before the morning recess. I want to instruct all of the jurors on the panel, those who have been here and those who came today, during recess until further instructions from the Court you are not to discuss any matter directly or indirectly connected with this case among yourselves or with any other person. The jury in the box may now retire to the jury room. Court will be at recess until 11:15.

(Recess.)

[fol. 326] Charles Hickling (whereupon, promising to true answer make to questions propounded to him touching upon his qualifications to act as juror, was duly sworn.)

The Court: Please be seated. Will the jurors who have just been sworn on the panel, Mr. Hickling and those in the front two benches of the court room, please give me your close attention. We are now involved in the process of selection of a jury in this case and examination concerning the qualifications of individuals called to be sitting on this particular jury. To that end, I will in a moment explain the general nature of this case, some of the factors involved, and then will ask Mr. Hickling questions for him to respond. Those questions are also at the same time directed to the rest of you in the court room, so I ask your particular attention to all these matters so that if called, you may refer back in your minds to those questions and respond to them.

This is a suit entitled State of Washington, plaintiff, vs. David D. Beck, also known as Dave Beck, defendant, brought by an indictment of the Grand Jury of this county

stating as follows:

"David D. Beck, also known as Dave Beck, is accused by the Grand Jury of the County of King, State of Washington, by this indictment, of the crime of Grand Larceny, committed as follows:

He, the said David D. Beck, also known as Dave Beck, in the County of King, State of Washington, on or about the third day of February, 1956, then and there having [fol. 327] in his possession, custody or control as agent, bailee, employee, servant, officer or trustee, certain personal property, to-wit: the sum of \$1900.00 lawful money of the United States, the property of the Western Conference of Teamsters, an unincorporated association organized as a labor union, the said \$1900.00 being derived

from the sale to one Martin B. Duffy on or about the thirtieth day of January, 1956, of one 1952 Cadillac automobile, motor number 526004746, the property of said Western Conference of Teamsters, the said David D. Beck, also known as Dave Beck, in the County of King, State of Washington, on or about the third day of February, 1956, then and there did wilfully, unlawfully and feloniously secrete, withhold or appropriate the said \$1900.00 to his own use with intent to deprive and defraud the owner thereof:

-

Contrary to the statute in such case made and provided, and against the peace and dignity of the State of Washington."

To this indictment and charge, the defendant has entered a plea of not guilty. Endorsed as witnesses to the indictment in this case are the following: M. J. Devine, Frank E. Dutton, M. B. Lake, Martin B. Duffy, Donald D. McDonald, Ken Eline, David L. Forrest, Alfred Roger Hill, Charles V. Leaf, Carl E. Houston, Ludwig Lobe, Samuel B. Bassett, Frank W. Brewster, Marcella M. Guiry, William H. Marx, Russell Schley, Louise Sartor, E. É. Hepper, J. J. David, Roger Jones and William F. Devin.

Before asking specifically for answers from Mr. Hick-[fol. 328] ling, I wish to ask all of you to indicate by raising your hand how many have not tried or participated as a juror in a trial of a criminal case during this term! Have not. Thank you. How many have not participated in the trial of a civil case during this term! Thank you. One hand was raised. When was your first day of service,

madam f

Voice: The 12th of November.

The Court: And you have not been through a trial of any case?

Voice: I have had two criminal cases; I have had no

civil cases.

The Court: I beg your pardon. I did not notice your hand. Is there anyone present in the jury who has not sat through any kind of a case from the beginning to the end!

Now, I will direct my questions to Mr. Hickling for answers at this time but charge you again to pay close at-

tention to them in the event you may be called to answer them later. Before I do that, first I would like to introduce to you those participating in this case, brought by the State of Washington, as I have mentioned and represented by the Prosecuting Attorney for King County, Mr. Charles Carroll. Mr. Carroll? Assisted by Deputy Prosecutor Mr. Laurence Regal and by Deputy Prosecutor Mr. Charles Smith. The defendant, Mr. David D. Beck. Mr. Beck? Thank you. Represented by Mr. Charles Burdell. Mr. Burdell? And assisted by Mr. John Keough. Thank you, gentlemen.

Now, to Mr. Hickling.

[fol. 329] Questions asked of Mr. Hickling by the Court:

Q. Have you heard of this case before?

A. Yes.

Q. Do you know the defendant?

A. No, I don't.

Q. Do you know any of the counsel that has been introduced to you in this case?

A. No, I don't.

Q. In order that I may preface some other questions, I wish to point out to you at this time that the trial of a criminal case is different from that of a civil case in two very important respects. First, in a civil case, the plaintiff must prove his case by a fair preponderance of the evidence, which merely means a greater weight of the evidence, while in a criminal case, on the other hand, the State must prove its case beyond a reasonable doubt, which is a far greater degree of proof. Secondly, furthermore in a civil case, ten may agree upon a verdict whereas in a criminal case the law requires that all twelve agree upon a verdict. It is presumed that when a juror has been selected and accepted by each side that the jurors will keep their minds open until the case is finally submitted to them and it is presumed that the jurors will accept the instructions of the Court as to the law, regardless of the fact and whether the juror may or may not agree with the law. The juror is required to accept the law as expressed by the Court as being the law and applying it. The juror must base his decision therefor upon the law as declared by the Court and the facts garnered from [fol. 330] the evidence submitted in the case in the Court, and base his decision upon this law and the facts unin-

fluenced by any other consideration.

Now, the purpose of questions on the examination of jurors, which process we are now presently engaged in, is to determine whether or not the jurors have that frame of mind. The Court asks some general questions and then the Court will permit each side to ask questions of the jurors concerned on that subject matter of your qualifications to sit upon this particular jury.

Now, again, to Mr. Hickling, do you have any informa-

tion regarding the offense here charged?

A. No. I haven't.

Q. Have you talked with anyone who claimed to have had any first-hand information regarding the offense here charged?

A. No, I haven't.

Q. Has anyone ever expressed to you an opinion as to the guilt or innocence of the defendant?

A. Yes.

Q. Was such expression concerned with this particular charge?

A. No.

Q. Now, perhaps you may have read about this matter in the newspapers or you may have heard something about it directly or indirectly on the radio or perhaps you have heard and seen something about it on the television or that situation may perhaps exist with respect to those means of communication with respect to the matter here [fol. 331] charged or other matters. Before I question you on that subject, I wish to explain that the mere fact that you may have read in the newspapers or heard on the radio or seen and heard on the T.V., an account of the alleged crime or of some other matter directly or indirectly which are not connected does not necessarily in and of itself disqualify you from serving as a juror. To hold that would mean that a juror could not read or see or hear and that, of course, by the statement would be im-

proper and sounds ridiculous. People who just by the mere fact of reading or hearing or seeing public media are not

by that reason excluded.

The test, therefore, is not whether you have read or heard or seen something about it in that nature but whether if drawn on the jury, you are able to enter upon the trial with an open mind and disregard what you have read or heard or seen on T.V. and decide the issue here entirely and purely upon the evidence received at the trial and the instructions of the Court as to the law. Or, to put the idea another way, it would be done by asking the question, "Do you now have an opinion or impression as to the guilt or innocence of the accused which would require evidence to remove from your mind?"

If you do have such an opinion or impression, neither side should have the burden of having to remove from your minds any preconceived opinion or a biased opinion previously formed. All persons know that impressions they have received from what they have read in the newspapers or heard on the radio or heard and seen on television are not [fol. 332] always true and would not rest a decision upon such an impression without a much more formal and more

convincing type of proof.

Now, in the context of that explanation, if you, Mr. Hickling, from what you have read or heard or seen do feel that you have in your mind an opinion as to the guilt or innocence of the defendant or such an opinion as would require evidence to remove, please say so.

A. I really have not had too much interest in the matter at all. I don't believe I have enough interest or have not had enough interest in the case to form any opinion or

any other-

Q. And you would answer that question, "No?"

A. No.

Q. All right. Have you, Mr. Hickling, ever been a member of any organization associated with the Western Conference of Teamsters?

A. No.

Q. Have you or anybody closely associated with you been a member of the Western Conference of Teamsters or any union?

A. Yes.

Q. And has that association or that membership, will that have any influence or impression upon you to prevent you from being fair and impartial in this case?

A. No.

Q. Before I ask the next question, I would like briefly to explain that the Court has decided that the jury in this case, as is provided by law in criminal cases, will be during [fol. 333] the process of the case confined and not allowed to separate. Now, I or no person is able to say how long the case will extend. It can only be said with certainty that it would be a reasonable time in consideration of the person's jury service and jury duty. During such confinement, the jury will not be allowed to have newspapers or radio or television or books or magazines or reading material. The accommodations for jurors are supervised by the Court and are in a comfortable arrangement in this building for sleeping and personal attention, and meals are in restaurants or hotels, first-class, within the area. I can say I am sure that there is everything done for your comfort that can be done reasonably so, and that the only discomfort might possibly be whatever there is, if there is some, from being confined together with a group of people in some way in a dormitory situation.

During that time, of course, previous to the confinement, the Court will allow and will help you obtain such things of a personal nature you need for your needs during the entire period of time. During the confinement you will be allowed to communicate through the bailiffs for anything further you may need or with your families or they with you, with respect to your personal needs and their care

and comfort.

Is there anything about that situation, Mr. Hickling, that you feel is different than the imposition that we well recognize all jurors in their service experience that would prevent you from serving on this jury?

[fol. 334] A. No.

Q. Is there anything, Mr. Hickling, about the nature of this case, the kind of case it is, the charge of grand larceny and a criminal case, that would cause you to start in the trial with any bias or prejudice either one way or the other? A. No.

Q. Do you know of any reason at all why you could not

try this case impartially?

A. There was one name mentioned, I heard you refer to those names before, Russell Schley. That isn't Colonel Schley, is it?

Mr. Regal: No, your Honor. That is an accountant and actually the name is pronounced "Sly."

A. No, there isn't.

Q. Spelled S-c-h-l-e-y, an accountant. Would you be willing, Mr. Hickling, and in this question I want to ask you to make some assumptions and each of the other jurors present make the assumptions, if you were in the position of the prosecuting attorney here charged with the responsibility of handling this case for the State or in the position of Mr. Burdell and his associates and defendant's counsel and could look into the minds of the twelve jurors in the jury box as you can look into your own minds, would you be willing to submit a case of like importance and seriousness to you as such counsel to twelve men and women in the same frame of mind as you are in at this time and feel sure that you would have a fair and impartial trial?

A. Yes.

The Court: Gentlemen, you may inquire.

[fol. 335] Questions of Mr. Hickling by Mr. Regal:

- Q. Mr. Hickling, you heard the questions that were asked by me to the other jurors while you have been in the room here?
 - A. Yes.
- Q. And you heard the questions asked by Mr. Burdell, also?
 - A. Yes.
 - Q. You have understood the questions clearly?
 - A. Yes.
 - Q. What we are both driving at?

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A. Yes.

Q. Do you know of any reason after recalling those questions why you would not be fair and impartial in this case!

A. I would certainly be fair and impartial as to the evi-

dence as presented, yes, I would.

Q. You have no preconceived notions, ideas or prejudices that might interfere with your judgment in any way?

A. Not-no.

Q. Mr. Hickling, what work do you do?

A. I am a supervisor at Boeing Airplane Company.

Q. How long have you been there, sir?

A. Twenty years.

Q. How long have you been a supervisor?

A. Fourteen years.

Q. You were supervising during the spring in 1948?

A. '47, '48, yes, I was.

Q. '47, '48, and did you go off work for a while there!

A. No.

Q. Were you connected in any way with the union trouble that was going on at that time?

[fol. 336] A. Yes.

Q. What kind of work?

A. She was an accountant for Fisheries Supply.

Q. And how long did she work at that?

A. Nine years.

Q. And did she have any contact or connection with unions during that period of time?

A. No, she was not a union member, no.

Q. And had no supervisory capacity there?

A. No.

Q. Have you served on a jury, you haven't served on a jury trying a criminal case!

A. I haven't.

Q. But you have served on a jury trying a civil case!

A. Yes.

Q. Second or fourth week?

A. With the recess, this would be my third week.

Q. Actually your second week of duty!

A. This would be my second week of duty, yes.

Q. You said that there was some close association with someone who is connected with the Western Conference of Teamsters, or was that your answer?

A. No, just my friends that are union members. I believe everybody has friends that are union members. That is the only connection I have.

Q. You have associates who are Teamsters and members

of other unions?

A. That's right.

Mr. Regal: Pass Mr. Hickling for cause, your Honor.

[fol. 337] Questions of Mr. Hickling by Mr. Burdell:

Q. Mr. Hickling, I may be wrong, but don't you have some other occupation besides—aren't you connected with Miss Seattle in some way?

A. Yes, I am a driver of Miss Seattle, yes.

Q. Now, these friends who are—if you are a driver, that means you are a part owner of Miss Seattle?

A. No, I strictly just drive the boat for the people that

own it or control it.

- Q. I see. The friends of yours who are union members, do you know whether or not any of them are members of the Teamsters Union?
- A. Yes, one of the fellows that lives about two doors from me is a bus driver for the Bellevue System and he is a Teamster.
- Q. Have you ever had any conversation with him about his union activities or whether or not he has any hostility towards the Teamsters Union?

A. No.

- Q. As far as you know, then, is he the only one that you know of that is a member of the Teamsters, that you can think of at this time?
- A. I believe that some of the people in my shop at Everett are Teamster members. I don't make a practice of defining between the two.
- Q. In any event, you have no discussions with them, I take it, which would affect your feeling towards Mr. Beck, towards the Teamsters Union?

A. No.

Q. You said something before of having heard expres-[fol. 338] sions of the guilt or innocence of the defendant in this case. From whom did you receive those expressions? A. From general talk, people that I have talked with and associated with and naturally they express their opinions one way or the other.

Q. Yes, and have you expressed any such opinion your-

self 1

A. Yes, I have.

Q. And has that been in an opinion adverse or hostile to the defendant?

Mr. Regal: I don't think that is a proper question, Your Honor.

The Court: Objection sustained.

Q. Well, is that an opinion, I think we are talking about an opinion of guilt or innocence, your Honor. Have you, yourself, expressed any opinion of the guilt or innocence of the defendant?

A. Well, any opinion that I have expressed is based solely on what I have heard or seen on the television. I wouldn't want to go on record as saying it would be any evidence that I know of. I have never expressed any opinion.

Q. Well, the point is, if you have an opinion I have to

know about it.

A. Naturally. I see.

Q. And if you have expressed one, why that leaves me to believe that perhaps you do have one. At the present time, do you have any opinion as to the guilt or innocence of the defendant?

Mr. Regal: Your Honor, I think it should be limited to this case.

[fol. 339] The Court: I think that is fair, Mr. Burdell. Rephrase the question.

Mr. Burdell: Yes.

Q. I am referring to this case, Mr. Hickling.

A. I have not expressed any opinion as to this particular case.

Q. I see. The opinion you have expressed then has been opinions or an opinion related to other assertions or charges which have been made concerning or about Mr. Beck?

A. That's right.

Q. Is that correct?

A. That's right.

Q. Now, would the opinion that you have expressed concerning other matters have any effect at all in your consideration of the guilt or innocence of the defendant in this particular case?

A. That is a hard question to ask, because I don't have any evidence that these assertions that have been placed

against Mr. Beck are true.

Q. Well, I know you don't. I am aware of that. But I am concerned because of the fact that you say you might have expressed opinions. Let me ask you this, then. Whatever opinions you have expressed, can I be sure that they are qualified by the fact that that is, as you now say, you are not sure whether or not they were true or not sure whether your opinions are based upon any real evidence?

A. That's right. Any opinion I have expressed is strictly not on any evidence or any knowledge I have, any evidence. [fol. 340] Q. Do you think that you could completely disregard whatever reports or assertions have been made about Mr. Beck as far as this case is concerned and just

treat them as if you have never heard them?

A. Certainly, yes.

Q. And do you think that you can and will understand that the fact that other assertions have been made is not to be considered by you in any way as affecting your verdict in this case; in other words, I want to be sure you are not going to feel somehow or other that because you might find that the defendant is not guilty in this case on these facts you won't in any way be influenced by the fact that you may have had some other assertion or charge which is not being tried here. Can I be pretty sure of that?

A. Yes, you can, because I have really not had very much interest in Mr. Beck or the case, so that is my frame of

mind.

Q. All right, I will—just a minute, your Honor. Just to be—so we will know what the situation here is, Mr. Hickling, Mr. Keough has worked at the pits, he is my associate in the office and in the office there, and I don't think you know him but perhaps you recognize him.

A. I have seen him, yes, I have.

Mr. Regal: Worked where?

Mr. Burdell: In the pits. Mr. Hickling: Gold Cup.

Mr. Regal: Oh.

The Court: Pass for cause!

Mr. Burdell: Yes, I did, your Honor.

[fol. 341] The Court: Bring in the jury, please.

(The following occurred in the presence of the jury:)

[fol. 342] The Court: State's fourth peremptory challenge.

Mr. Regal: The State will accept Mr. Hickling as a juror,

Your Honor.

The Court: Defendant's fifth peremptory challenge.

Mr. Burdell: Your Honor, I guess I will excuse No. 5.

The Court: Will you step down, please? The Clerk will

please call another juror.

The Clerk: Edna N. Whittle, 4103 Chilberg Avenue.

The Court: Miss or Mrs.?

The Juror: Mrs.

The Court: Were you present in court and sworn with the rest of the jurors today?

The Juror: Yes, sir.

The Court: Did you hear the Court's reading of the indictment and introduction of the parties and counsel and explanation of the case and the witnesses?

The Juror: Yes, sir.

The Court: Did you hear and understand the questions that the Court asked Mr. Hickling?

The Juror: Yes, sir.

The Court: In answer to any of those questions if posed to you, would you have answered any of them yes?

The Juror: Well, yes, I have heard of the case.

The Court: Heard of the case before. Any others!

The Juror: I have heard so many questions and answers, but I don't think so.

[fol. 343] The Court: All right. Do you know the defendant?

The Juror: No.

The Court: Do you know any of the counsel that I mentioned and introduced?

The Juror: No.

The Court: Are you or anyone closely associated with you a member or member of an organization associated with the Western Conference of Teamsters?

The Juror: No, sir.

The Court: Are you or anyone closely associated with you a member of any union of any nature?

The Juror: No, sir.

The Court: Is there anything about your personal life and arrangements that it would be an undue imposition upon you to serve upon this jury because of the confinement?

The Juror: Well, it wouldn't be easy but it is possible. The Court: Now, having in mind the remarks that I made concerning reading or seeing or hearing something about this or some associated matter or not associated matter concerned with the name of the defendant or unions, the matter of having read things or heard them in the public communications, radio, newspapers, or TV, do you feel that you have in your mind an opinion as to the guilt or innocence of the defendant or such an opinion that it would require evidence to remove?

The Juror: No, sir.

The Court: Is there anything about the nature of this [fol. 344] case, the kind of case it is, grand larceny, criminal case, that would cause you to start in the trial with any bias or prejudice whatsoever?

The Juror: No, sir.

The Court: Do you know of any reason why you could not try this case impartially?

The Juror: None.

The Court: Gentlemen, you may inquire.

Voir dire examination.

By Mr. Regal:

- Q. Mrs. Whittle, are you employed?
- A. No, sir.
- Q. What does your husband do, ma'am?
- A. He is a CPA.
- Q. How long has he been a CPA?

A. Since he was 21.

Q. All right. That is the work he has been doing all

the time since he got out of school?

A. No. no. he worked for the government before I knew him though, and he was with a construction company in California.

Q. What kind of work did he do there!

A. He was an accountant.

Q. But he has done accounting work all during his working life!

A. As far as I know.

Q. As far as you know!

A. Yes.

Q. Have you ever worked?

[fol. 345] A. Yes.

Q. What kind of work have you done! By that I mean, of course, working for salary and wages. I do not mean working in the house.

A. I was a secretary for an insurance company before I

was married.

Q. I see; what company was that?

A. Crowley Insurance Agency in Salt Lake City.

Q. In other words, not in Seattle?

A. No.

Q. Was that the only job that you have held or have you had other jobs of a like nature!

A. Similar, before that one.

Q. But all office work?

A. Yes, sir.

Q. Any of them involve belonging to a union!

A. No, sir.

Q. And your husband has never belonged to a labor union f

A. No. sir.

Q. Ever been any conflict or anything else associated with labor unions during your experience?

A. What do you mean, "associated"?

Q. Well, no conflict of any kind, no connection with it in a business way !-

A. Well, yes. My husband's firm, I am not sure, they

have made an audit of unions.

Q. I see. What firm is it?

A. Whittle & Whittle.

Q. Did they make an audit of the Western Conference of Teamsters?

[fol. 346] A. Yes, sir.

Mr. Begal: Your Honor, there is a bare possibility that a Mr. Whittle will be called as a rebuttal witness in the event that certain things develop. I think maybe if Counsel agrees Mrs. Whittle should be excused. Your husband is the only Whittle?

The Juror: His father also.

Mr. Regal: I think we have been in contact with Mr. Whittle, Your Honor, and—

Mr. Burdell: So have I, Your Honor.

Mr. Regal: Yes, we both have. The Court: Excuse Mrs. Whittle.

The Juror: Thank you.

The Court: The Clerk will call another juror.

The Clerk: Theodore Hultman, 1804 Ninth Avenue.

The Court: Mr. Hultman, were you in court and sworn with the rest of the jurors?

The Juror: Yes.

The Court: Did you hear the Court's explanation of the case briefly and the introduction of the parties and counsel?

The Juror: Yes.

The Court: And the reading of the names of the witnesses?

The Juror: Yes.

The Court: Did you hear and understand the questions that I asked Mr. Hickling?

The Juror: Yes.

The Court: In answer to any of those questions if they had been made to you would you have answered yes? [fol. 347] The Juror: Well, I have seen television and radio—

The Court: Heard of the case before?

The Juror: Yes.

The Court: Any of the other questions?

The Juror: No.

The Court: Is there anything about the nature of this case, the kind of case it is, that would make you start into this trial with any bias or prejudice one way or another?

The Juror: No.

The Court: Do you know of any reason why you could not try this case fairly and impartially?

The Juror: No.

The Court: Thank you. It is time for the noon recess. I will remind the jury of my charge concerning conversing with each other or any other person. You will now be excused in time to return for court session at 1:30 this afternoon.

(Whereupon, a recess was had until 1:30 o'clock P.M.)

[fol. 348]

AFTERNOON SESSION

1:30 o'clock P.M. December 4, 1957.

The Court: Bring in the jury.

(The following occurred in the presence of the jury:)

The Court: Please be seated. This will be the examination of Mr. Hultman by Mr. Regal.

Voir dire examination.

By Mr. Regal.

- Q. Mr. Hultman, what kind of work do you do, sir!
- A. I work in the sawmill.
- Q. What sawmill is that?
- A. Seaboard.
- Q. Seaboard?

- A. Yes.
- Q. Is that in Ballard?
- A. No, that is in the south end of town.
- Q. What kind of work do you do there, sir?
- A. I haven't worked—I have been in the hospital. I just came out with my leg. I used to work on the greenchain. I will be doing something else now, I guess.
 - Q. Were you injured at your work?
 - A. No, it was some other trouble I had.
 - Q. You say some other physical ailment you had?
 - A. Yes.
- Q. What is your health now! Is it satisfactory! [fol. 349] A. I am not too strong for work yet.
 - Q. What sort of ailment did you have, sir?
 - A. I had a vein operation.
 - Q. Varicose vein operation?
 - A. Yes.
 - Q. What sort of work did you do in the sawmill?
 - A. Greenchain.
 - Q. Greenchain!
 - A. Yes.
 - Q. What is that?
 - A. That is pulling lumber.
 - Q. How long have you worked in the sawmill?
- A. Not here, but I worked twenty years, thirty years, off and on.
 - Q. In this kind of work?
 - A. Yes.
- Q. Have you worked at any other occupation other than sawmill work?
 - A. Longshoring once in a while when I was off of work.
 - Q. What else, Mr. Hultman?
 - A. That is about all. I generally worked in the mill.
 - Q. Do you belong to a union in the sawmill?
 - A. Yes.
 - Q. What union is that?
 - A. Sawmill union.

- Q. Is that affiliated in any way with the Teamsters'
 - A. No.
- Q. There have been no disputes between the two unions at no time that you know of?
- A. Not since I have been here. I guess there was years ago.
- [fol. 350] Q. You have no feeling in this case related to that?
 - A. No, I haven't.
 - Q. Are you an active union member?
 - A. Well, no, I just go to meetings sometimes.
 - Q. You are not an officer of the union?
 - A. No.
 - Q. You have never held any office?
 - A. No, I haven't.
- Q. When you have done longshore work, do you belong to the longshoremen's union?
 - A. No, I just go down a day or so.
 - Q. You get a work permit?
 - A. Yes.
 - Q. Are you married, sir?
 - A. No.
 - Q. Have you ever been married?
 - A. No.
 - Q. How old are you, Mr. Hultman?
 - A. Fifty years old.
- Q. And this address, 1804 Ninth Avenue, is that your own home?
 - A. No, that is a hotel.
 - Q. How long have you lived there?
 - A. About fourteen months.
 - Q. Where did you live before that?
 - A. 1722 Minor.
 - Q. Is that an apartment?
 - A. Yes.
 - Q. How long have you lived in this area, Mr. Hultman?
 - A. Eleven years.

[fol. 351] Q. Where did you come from?

A. Idaho, Coeur d'Alene.

Q. Is that your home, in Idaho?

A. Yes.

Q. Were you born and raised there?

A. I was raised there but I was born in Chicago.

Q. In Chicago. Idaho, Chicago and Washington are the three states you have spent time in?

A. Yes.

Q. Have you ever been in the service?

A. No.

- Q. Have you served on a jury trying a criminal case before?
 - A. No, I haven't.
 - Q. On civil cases?

A. Yes.

- Q. What was the nature of that case?
- A. There were different ones.
- Q. More than one case?

A. Yes.

Q. Is this your fourth week?

A. Yes, this is my last week.

Q. You say that you are going back to work as soon as you are through here?

A. Yes.

Q. And you don't know what kind of work it will be but it will be in the mill?

A. Yes.

Q. Now have you or any member of your family or any close friend or relative ever been involved in any way in a criminal matter? That is, as a victim, a witness, or any [fol. 352] other manner?

A. No, I haven't.

Q. What members of your family are out here?

A. Just a half sister.

Q. A half sister?

A. Yes. My brother is in Idaho.

Q. Do you know Mr. Burdell or any of his associates?

A. No, I don't.

Q. Do you know Mr. Carroll or me or any of the deputies?

A. No.

Q. You don't know any of the witnesses we have named personally?

A. No, I don't.

Mr. Regal: Pass Mr. Hultman for cause, Your Honor.

Voir dire examination.

By Mr. Burdell:

- Q. Mr. Hultman, has there been anything in connection with your union membership which has caused you to feel bitter or to have any prejudice of any sort toward union officials?
 - A. No.
- Q. Your union membership has been satisfactory as far as you know?
 - A. Yes.
- Q. Now I think you said something about having had conversations with other members about some problem between the Teamsters and the Sawmill workers?

A. I have heard some talk about it but not much. I don't [fol. 353] pay much attention to it. It was before my time.

Q. I don't know what that is.

A. I don't either.

- Q. Whatever it is, has it caused you in any way to have any resentment or bitterness toward the officers of the Teamsters' Union?
 - A. No.
- Q. Do you have any form, any source, Mr. Hultman, any resentment or feeling of bitterness toward the Teamsters' Union or toward Mr. Beck!

A. No.

Mr. Burdell: Pass Mr. Hultman.

The Court: The State's fourth peremptory challenge.

Mr. Regal: The State will excuse Mr. Hultman, Your Honor.

The Court: Mr. Hultman, will you step down, please. The Clerk will call another juror.

The Clerk: Frank A. Walton, 1533 30th Avenue South.

The Court: Mr. Walton, were you present in court and sworn with the rest of the jurors today?

A. I was, Your Honor.

The Court: Did you hear my general explanation briefly of the case and the introduction of the parties and counsel?

A. Yes, sir.

The Court: Did you hear the reading of the names of the witnesses that the Court read?

A. Yes.

[fol. 354] The Court: Did you hear and understand the questions I asked Mr. Hickling when I examined the jurors today?

A. Yes.

The Court: If those questions had been posed to you as I am now posing them to you, would you have answered yes to any of them?

A. Yes.

The Court: Which ones, sir?

A. I have heard of the case.

The Court: That is the first question.

A. I have been present when conversation was had regarding this case.

The Court: Any other questions that I asked that you would have answered yes?

A. I can't recall all of them, Your Honor.

The Court: Is there any reason because of the nature or kind of case this is that you would start into this trial with any bias or prejudice whatever?

A. Not that I know of.

The Court: Do you know of any reason at all from all that you have heard transpire while you have been a juror why you could not try this case impartially?

A. No, I do not. I have been affiliated with the union here for some years.

The Court: Does that change the answer to your question? Do you think that makes you anything but impartial?

A. I don't think it would. I should state to you that I did have a working permit out of the Teamsters' Union at [fol. 355] one time in 1946.

The Court: Gentlemen, you may inquire.

Voir dire examination.

By Mr. Regal:

Q. Mr. Walton, state what kind of work you do now, sir.

A. Postal clerk.

Q. How long have you been with the Post Office department?

A. Eleven years.

Q. In 1946 you say you had a work permit to work as a teamster or swamper on a truck?

A. No, I was employed by the Yellow Cab Company at that time and I had a working permit to drive a cab.

The Court: Would you speak just a little bit louder, please, so that this gentleman can record you?

By Mr. Regal:

Q. Mr. Walton, did anything occur during that period of time that would prejudice you one way or another! When I say "one way or another," I mean either for the State or against the defendant?

A. No, nothing.

Q. There is nothing in your experience that is going to upset you or prejudice you, nothing you can remember is going to affect your verdict in this case?

A. Yes.

Q. What kind of work did you do before that?

A. I was a musician.

Q. Where was that, sir?
A. All over the country.

Q. Did you play for any orchestra?

A. Yes, with several, and I had my own for a number of [fol. 356] years around here.

Q. What sort of music did you play? Was it popular or long-haired?

A. Popular.

Q: You played in a dance orchestra?

A. That is correct.

Q. What was the name of your own orchestra?

A. It was under my name for a while and then I was a partner with a man named Blackwell. It was Blackwell & Walton.

Q. You played at various night spots in Seattle?

A. We played at night spots. Primarily we did work for the schools. We worked at the University and at high schools.

Q You played for school dances?

A. That was mostly the work we did.

Q. What instrument do you play?

A. Trumpet.

Q. We had another musician but I guess he is not here any more. Mr. Walton, have you served on a jury trying a criminal case before?

A. No, I haven't.

Q. Is this your second or fourth week?

A. This is my last week, my fourth week.

Q. You say this is your last week. If it happens that this case goes over into next week, that is not going to cause any great consternation in your mind so that you will be impatient with counsel and myself?

A. No.

Q. Or impatient in reaching your verdict? You are not [fol. 357] going to compromise because you want to get away?

A. No.

Q. You understand that they don't pay overtime and this is likely to go into next week?

A. Yes.

Q. Now are you married, Mr. Walton?

A. I am.

Q. Do you have children?

A. No children.

Q. Does your wife work?

A. She does.

Q. What does she do?

A. She is a clerk for the Army out at Pier 91.

Q. How long has she been with the Army?

A. About a year and a half.

Q. What did she do before that?

A. Housewife.

Q. That has been during your married life?

A. That is right.

Q. You got her to work a year and a half ago?

A. Yes.

Q. Mr. Walton, have you, any member of your family, any close friend or relative ever been involved in any way in a criminal case? That is, as a witness, a victim, or in any other manner?

A. Yes.

Q. Do you have relatives in this area other than your wife and yourself?

A. I have one cousin.

Q. Is it a boy or a girl, man or woman? [fol. 358] A. It is a man.

Q. What kind of work does he do?

A. He works at Sand Point. He is a head waiter out there.

Q. Are you in close contact with him?

A. Not too close. I see him about twice a year.

Q. I see. That is not very close. Well, do you know counsel on either side?

A. No.

Q. You do not know me or Mr. Smith or any member of Mr. Carroll's staff, any of the other members?

A. No.

Q. You heard the questions that I asked all the other jurors and they are about the same lines that I have asked you, and you have heard the questions Mr. Burdell a ked. Have you understood all of them?

A. Yes.

Q. Is there any reason at all after examining the sub-

conscious of your mind that you couldn't be a fair and impartial juror in this case?

A. No.

Mr. Regal: Pass this juror for cause.

Voir dire examination.

By Mr. Burdell:

Q. Mr. Walton, how long did you have the work permit—is that what you call it? Sort of a temporary membership?

A. That is right.

Q. With the Teamsters' Union?

A. About seven or eight months.

[fol. 359] Q. Why did you leave that particular employment?

A. I had already taken the postal examination and at this time the job opening came up.

Q. I see. Your leaving that employment had nothing to do with union membership or anything of that sort?

A. No.

Q. Were your experiences with the Teamsters' Union during that period of time wholly satisfactory?

A. Oh, yes. It was just a matter of going to the union office, picking up the permit, and that is all there was to it.

Q. You didn't have any difficulty in obtaining it or anything of that sort?

A. No.

Q. What is the union you belonged to?

A. Local 493, American Federation of Musicians.

Q. How long have you belonged to the American Federation of Musicians?

A. Since 1927.

Q. Was Mr. Petrillo head of it then?

A. No.

Q. He is now, is he not?

A. He is now.

Q. Have your relationships with the officers of that union been satisfactory?

A. Yes.

Q. I suppose, Mr. Walton, that you have heard discussions about this particular case.

A. In a small way.

Q. Have you yourself any opinion about the guilt or [fol. 360] innocence of the defendant in this case?

A. No, I do not.

Q. Have you had discussions or heard reports about Mr. Beck and the Teamsters' Union in connection with other affairs or other claims of misconduct of one sort or another!

A. Well, I have heard reports and I have heard discussions right along the line, but I believe most of it was hearsay. I did see him on TV some time ago and I have

read a little bit in the papers, but that is all.

Q. Have you formed any opinion at all concerning Mr. Beck as a result of those reports which is going to require some evidence to be introduced by me to remove or to evercome that opinion?

. A. No, I do not have no opinion.

Q. You do not form opinions based on hearsay, I gather!

A. No, I don't believe so.

Mr. Burdell: We will pass this juror for cause.

The Court: The defendant's sixth and last peremptory challenge.

Mr. Burdell: May I have a moment, Your Honor?

The Court: Certainly.

Mr. Burdell: I am going to excuse Mr. Woods, Your Honor.

The Court: Mr. Wood, would you step down, please. The

Clerk will call another juror.

The Clerk: Anna E. Harold, 2423 Spencer Street. The Court: Be seated, ma'am. Is it Miss or Mrs.?

A. Mrs.

The Court: Mrs. Harold. Were you present in court [fol. 361] and sworn with the rest of the jurors in this matter?

A. Yes, I was.

The Court: Did you hear the Court's brief explanation of the case and the introduction of the parties and counself

A. I did.

The Court: Did you hear the Court's reading of the names of the witnesses?

A. Yes, I did.

The Court: Did you hear and understand the questions that the Court put to Mr. Hickling this morning?

A. Yes, I did.

The Court: If those questions were put to you at this moment, would you answer any of them yes?

A. Yes, I would.

The Court: Which ones?

A. The first one.

The Court: That you have heard of the case before?

A. Yes, I have.

The Court: And any others?

A. I can't remember just all that was asked. If you would repeat some of them.

The Court: Certainly. Are you or any member of your family or close associates of yours a member of any organization connected with the Western Conference of Teamsters?

A. My husband belonged to the Teamsters' Union right [fol. 362] after the war, in 1945.

The Court: Is he now a member of the Teamsters' Union?

A. No, he is not.

The Court: Is there anything about the fact that the jury may be or shall be confined in this matter that would be a burden upon you that you could not serve?

A. Well, I have a boy 16 years old that is in high school and he would be at home alone.

The Court: Do you feel that would cause you or upset you in any way?

A. If I could find someone to stay with him nights I would feel better.

The Court: Do you and he live alone now?

A. Yes, we do.

The Court: Do you have a home of your own or an apartment?

A. We have a home of our own.

The Court: Have you on any other occasion left him alone for a period of time, say three or four days?

A. Only when he was little. I was sick and my sister had to take care of him then.

The Court: Are you presently employed?

A. No, not at present.

The Court: Do you know the defendant in this case?

A. No, I do not.

The Court: Do you know any of the counsel that have been introduced to you?

A. No, I do not.

[fol. 363] The Court: Or any of the witness' names that I have read?

A. No, I do not.

The Court: With reference to the remark the Court made regarding things in the newspaper or hearing them on the radio or hearing and seeing them on television, have you read or heard something of this case or other matters connected with the defendant on any of those media?

A. I have listened to the news and sometimes the news has been on but I haven't paid much attention to it.

The Court: From what you have heard or read or seen in that fashion, do you have an opinion as to the guilt or innocence of the defendant, that is, such an opinion as would require evidence to remove?

A. No.

The Court: Is there anything about the nature or kind of case that this is that would cause you to start into the trial with any bias or prejudice whatsoever?

A. No.

The Court: Do you know of any reason at all from all of the background you have heard while in attendance upon this case, why you could not try this case impartially?

A. I do not.

The Court: Gentlemen, you may inquire.

Voir dire examination.

By Mr. Regal:

- Q. Mrs. Harold, you say your husband was a member of [fol. 364] the Teamsters' Union right after the war?
 - A. Yes, he was.
 - Q. For how long!
 - A. I don't recall how long.
 - Q. Was it a matter of years?
- A. Yes, it was a few years but just how long I couldn't tell you. He started in the jewelry business for himself after that.
 - Q. What kind of work did he do prior to the war, ma'am?
- A. Just anything that he could find to do. I couldn't just exactly say what that would be. He worked as a longshoreman and just anything that he could get.
 - Q. Was he active in any of the unions that he belonged to?
 - A. No, he just belonged to the union, paid his dues.
 - Q. And this jewelry business, was that in Seattle!
 - A. Yes, it was.
 - Q. Is your husband deceased now?
 - A. No, he is not. He is in Spokane in business.
 - Q. What kind of business is he in over there?
- A. He is still in the jewelry business but he is really a watch repairman now.
 - Q. Have you ever worked, Mrs. Harold?
 - A. Yes, I have.

Q. What kind of work have you done?

A. I was an alteration lady and I worked in quite a few of the department stores here in Seattle.

Q. That is on women's clothing?

A. Yes, and I also did monogramming.

Q. How long did you work in that profession?

A. Oh, I suppose about eight years. Then I took sick [fol. 365] and I couldn't work any more.

Q. How is your health now?

A. Pretty good.

Q. You say you have a 16-year-old boy at home?

A. Yes.

Q. He is going to school now?

A. Yes.

Q. Does he work at any job?

A. Yes, he does have a job on Saturdays.

Q. What does he do?

A. He works at Buchan's Bakery on Saturdays.

Q. Inside the bakery!

A. Yes.

Q. He doesn't have to belong to a union?
A. Not that I know of. No, he does not.

Q. If you were held together a week to ten days without being able to see him and contact him, would that upset you to the extent that you would be unable to objectively listen to the evidence in this case?

The Court: I think that question contains one slight inaccuracy as to not being able to contact. Jurors may contact through the bailiff.

By Mr. Regal:

Q. By contact I meant being able to see him. I mean being able to see that he took care of the things he had to take care of, carry out the ashes, is that going to upset you, Mrs. Harold, to the extent you are not going to be able to concentrate as a juror should on the evidence and be patient with both counsel and with the court and with the other jurors in your deliberations later?

[fol. 366] A. No, it would not if I can find somebody that

can stay with him nights.

Q. Did you try to do that last evening?

A. No, I did not because I had no idea I would be called today.

Q. I see. This panel came down today.

A. Yes.

Q. The panel that was here yesterday, they were told they should make arrangements. I thought possibly you were in that group.

A. No, I was not.

Q. How long would it take you, Mrs. Harold, to find out whether you could have somebody check to see whether they would look in on the boy or take care of him while you were gone? Could you do it by telephone call?

A. Not right now. The party I think I could get is working during the days but she probably could stay at

night.

Q. Is that a relative of yours?

A. No, just a close friend.

Q. I see. At the present time, what is your frame of mind? Are you upset because you are here and maybe held together if you are selected as a juror and you will have to do the contacting through a bailiff?

A. No, that is all right.

Q. It doesn't upset you now?

A. No.

Q. You are not going to be impatient with us and the Court?

A. No, I am not.

Q. Have you sat on a jury trying criminal cases before, Mrs. Harold?

[fcl. 367] A. No. I haven't.

Q. Is this your second or fourth week?

A. My second week.

- Q. Is Seattle your home city or have you lived elsewhere!
- A. Yes, I was born in eastern Washington, Wapato, Washington, and I have lived in Norway for about nine years, was raised in Norway, and I came back and lived in Seattle for about ten years. I went to China, lived in China for about three years. Since 1940 I have lived in Seattle.

Q. When you lived in China and in Norway, that was

with your family!

A. When I was in Norway it was with my family but when I was in China I was a missionary and I lived there two and a half years and was married in China.

Q. How long were you a missionary?

A. Oh, close to three years.

Mr. Regal: Pass Mrs. Harold for cause, Your Honor.

Voir dire examination.

By Mr. Burdell:

- Q. Mrs. Harold, what was your husband's occupation during the period that he was a member of the Teamsters' Union?
 - A. He worked in the shipyard.

Q. In a shipyard?

A. Yes.

Q. So far as you know, were his relationships with the union and the union officers satisfactory?

A. As far as I know it was fine.

[fol. 368] Q. You don't know of any disputes he might have had with any union officer, do you?

A. No, not to my knowledge.

Q. As a result of his membership, do you in your own mind have any feeling of bitterness or prejudice or hostility toward officers of unions?

A. I belong to a union myself.

Q. What union do you belong to?

- A. The Retail Clerks' Union. That is A F of L.
- Q. And what about your own experience? Has your own experience been satisfactory so far as your union membership is concerned?

A. Yes, it has. Right now I have not a discharge but I

am out on leave because I was sick.

Q. There is nothing about your union membership, your union experience, which would cause me to worry about any prejudice you might have about union officers?

A. No.

Q. I think you said you had heard about this case?

A. Yes, I have.

Q. Have the things you heard caused you to have any opinion about, let us say any opinion of prejudice or hostility at all towards Mr. Beck?

A. No.

Q. And you haven't formed any opinion about this case at all?

A. No, I haven't.

Q. The things that you have heard, have you heard that mostly from discussions with friends or relatives or has it

been mostly news reports?

[fol. 369] A. It has been news reports and a few people have asked me how I stood and I told them that I wouldn't know. I would have to hear the case first.

Mr. Burdell: Pass this juror for cause.

The Court: The State's fifth peremptory challenge.

Mr. Regal: The State has a challenge, I think, Your Honor, to Mr. Walton and also to Mr. Hultman. We will accept both of those jurors, Your Honor.

The Court: The jurors in the box will please rise. Raise your right hands to be sworn and please give close atten-

tion to the oath.

(Whereupon, the jury was duly sworn by the Clerk.)

The Court: Please be seated. In accordance with RCW 10.49.070, it is the opinion of the Court that the trial is likely to be a protracted one requiring the selection of an alternate juror, one in number. Under the statute in such event the State will have one peremptory challenge and the defense will have two. The Clerk will please call a juror for such alternate.

The Clerk: Margareth Fogg, 10017 Third Southwest. The Court: I wonder if I may trouble you to move forward just a bit. Please be seated. Is it Miss or Mrs. Fogg!

A. Mrs.

The Court: Were you in the courtroom today and sworn with the rest of the jurors?

A. I was.

[fol. 370] The Court: Did you hear the Court's general explanation of the case and the introduction of parties and counsel?

A. Yes, I did.

The Court: And the reading of the names of the witnesses?

A. I did.

The Court: Did you hear and understand the questions I asked Mr. Hickling?

A. I did, but I can't say that I remember them.

The Court: Have you ever heard of this case before!

A. I have, yes.

The Court: Have you, or are you or any close member of your family or close associate of yours a member of the Western Conference of Teamsters or any affiliated organization?

A. No, my husband is a member of the Barbers' Union.

The Court: Is there anything about the fact that the jury will be confined in this case that will prevent you from serving?

A. Not that will prevent me. I can't say I like it.

The Court: That wasn't quite the question I asked you. It is not going to be a burden upon you that would be different than other citizens doing their jury duty?

A. No.

The Court: Do you know the defendant in this case?

A. No. I do not.

[fol. 371] The Court: Do you know any of the counsel that I have introduced to you?

A. No, I do not.

The Court: Do you have any information regarding the offense that is here charged?

A. Well, I have slightly.

The Court: Any direct information?

A. No.

The Court: You are not a witness to anything that-

A. No.

The Court: Have you talked with anyone who claimed to have had any firsthand information regarding this offense?

A. No.

The Court: Has anyone ever expressed to you an opinion as to the guilt or innocence of the defendant as to this charge?

A. No.

The Court: You will recall for the moment the remarks that I made at the time I was addressing Mr. Hickling concerning reading matters in the newspaper directly or indirectly connected with the case.

A. Yes.

The Court: Or on the radio or on TV.

A. Yes.

The Court: I would like to ask you that question, to the effect that do you consider or have in your mind now an opinion as to the guilt or innocence of the defendant, an opinion that would take evidence to remove?

[fol. 372] A. I am not sure of myself on that. I am trying, but I am not sure whether I am prejudiced or not. Not sure on the guilt or innocence because I haven't really known what it is about.

Mr. Regal: Your Honor, I couldn't hear the answer. I wonder if we could have it read.

The Court: The Reporter will read the answer, please.

(The answer was read aloud by the Reporter.)

The Court: Is there anything about the nature or kind of case this is, the charge of grand larceny, it being a

criminal case, that would make you start into the trial with any bias or prejudice whatever?

A. No, not at all.

The Court: Could you speak just a little louder, please, as if you were speaking to Mr. Regal, the gentleman at the table. Do you know of any reason at all for your present impression and state of mind? You see what I am inquiring about, could you try this case impartially?

A. That is what I don't understand. I have seen him on TV and I wanted to shake him or something, but I wouldn't know.

The Court: 'The question isn't about that. The question is about this case.

A. Whether I feel animosity or not?

(Laughter.)

The Court: Any outward expression in this courtroom other than authorized by the Court, no matter how innocent it may seem, will result in either the eviction of the [fol. 373] person or persons involved or will result in a matter of contempt for confinement in the county jail.

Suppose, Mrs. Fogg, that you were in the position of the Deputy Prosecuting Attorney charged with trying this case for the State of Washington, or suppose that you were in the position of Mr. Burdell charged with representing the defendant in this case and you could look into the twelve jurors' minds as you can look into your own mind, would you be willing to submit a case of like importance and seriousness to twelve men and women in the same frame of mind you are in at this moment?

A. I don't think I would.

The Court: You may be excused. The Clerk will call another juror.

The Clerk: Harry S. Dodds, 1727 Belmont.

The Court: Mr. Dodds, were you present in court and sworn with the rest of the jurors today?

A. Yes, I was.

The Court: Did you hear the Court's general explanation of the case and the reading of the indictment and the names of the witnesses and the introduction of parties and counsel?

A. Yes.

The Court: Would you speak just a little louder, just as if you were speaking to the gentlemen at the table.

A. Yes.

The Court: Did you hear and understand the questions I asked Mr. Hickling?

[fol. 374] A. Yes, I did.

The Court: In response to those questions if put to you now, would you answer any of them in the affirmative, by a yes?

A. Well, I have heard about the case.

The Court: That is the first question. You have heard of the case before?

A. Yes.

The Court: Any of the other questions would you have answered them yes?

A. No, sir.

The Court: Is there anything about the nature or kind of case that this is that would make you start into the trial with any bias or prejudice one way or another?

A. No, sir.

The Court: Do you know of any reason why you could not try this case fairly and impartially?

A. No, sir.

The Court: Gentlemen, you may inquire.

Voir dire examination.

By Mr. Regal:

Q. Mr. Dodds, I know the Clerk read your address but I would like it again.

A. 1727 Belmont Avenue.

Q. 1727 Belmont?

A. Right.

Q. And Mr. Dodds, what is your employment?

A. I work for Boeing's as a timekeeper.

[fol. 375] Q. How long have you been employed at that?

A. Slightly over two years.

Q. How old are you, Mr. Doddst

A. 38.

Q. Are you married, sir?

A. No, sir.

Q. Have you ever been married?

A. No, sir.

Q. What sort of work did you do before you went to Boeing?

A. I worked as an accountant for an importing firm in

Honolulu. I am from Hawaii.

Q. Were you a CPA or just an accountant?

A. No, sir, just an accountant.

Q. How long did you work there?

A. I worked there from 1938 until 1941. I was in the Navy for four years and then I went back as an accountant after the war in 1945.

Q. Have you done any other kind of work during your

working life!

A. I sold new cars for about six months.

Q. What kind of cars did you sell?

A. Ford cars.

Q. Where was that?

A. In Honolulu.

Q. What is your home city?

A. Here, now. I have been here two years but I was born over there.

Q. In Honolulu?

A. Yes.

Q. And your family are all over there!

[fol. 376] A. All over there. I have relatives in Victoria, quite a few relatives. That is one of the reasons I have settled here.

Q. I see. But you have done accounting work and this other thing you mentioned, selling cars, and you are now a timekeeper at Boeing's. That covers your working life so far, is that it?

A. Yes.

Q. Have you ever belonged to any labor union during that period of time?

A. No, sir.

Q. Have you ever had any connection at all with labor unions in your work other than just with people who belonged to them?

A. No, sir.

Q. I have run out of questions with you in a hurry. You are not married and have no children so I can't ask you about all that. Have you ever been involved or has any member of your family or any of your close friends ever been involved in any way in a criminal case, that is, as a victim or as a witness or in any other manner?

A. Well, I have a brother who was a lieutenant on the Honolulu police force and he was in court once accused

of accepting a bribe.

Q. Were you there at the time?

A. I was in there for a time watching it.

Q. Without telling us anything specific about the outcome of that case, were you completely satisfied with the situation or did you carry away some bias, some prejudice, some feeling?

[fol. 377] A. I was completely satisfied.

Q. And you felt and you feel now that nothing happened then that would prejudice you one way or another here against the State or against the defense in this case?

A. That is right.

Q. You don't know Mr. Burdell or any of his associates, do you?

A. No, sir.

Q. You don't know me or Mr. Carroll or anyone connected with the Prosecutor's office?

A. No.

Q. You don't know any of the witnesses whose names were read?

A. No, sir.

Mr. Regal: That list was read to the jurors, wasn't it, Your Honor.

The Court: It was.

Mr. Regal: Pass Mr. Dodds for cause, Your Honor.

Voir dire examination.

By Mr. Burdell:

Q. Mr. Dodds, how long has it been that you have worked at Boeing's?

A. Slightly over two years. October, 1955.

Mr. Burdell: We will pass Mr. Dodds for cause, Your Honor.

Mr. Regal: I didn't hear that question.

Mr. Burdell: I asked how long he had been at Boeing's

and he said since October, 1955.

The Court: The State's peremptory challenge.

[fol. 378] Mr. Regal: Is the State first on this inasmuch as they have two and the State has one! I thought the defense was first. It doesn't make any difference. I am just curious. We will excuse Mr. Dodds, Your Honor.

The Court: The Clerk will call another juror.

The Clerk: John W. Evans, 2844 60th Southeast, Mercer Island.

The Court: Mr. Evans, were you present in court and sworn with the rest of the jurors today?

A. I was, Your Honor.

The Court: Did you hear the Court's general brief explanation of the case and the introduction of parties and counsel?

A. I did.

The Court: Did you hear the Court's reading of the list of witnesses?

A. I did.

The Court: Did you hear and understand the questions I put to Mr. Hickling subsequent to that explanation I made?

A. I did.

The Court: If I were to put those questions to you now individually, would you answer them, any of them, in an affirmative with a yes?

A. Yes, I would.

The Court: Which ones?

A. The first one, the third one, and the sixth one.

The Court: The first one, as to whether or not you have heard of the case before!

[fol. 379] A. That is right.

The Court: What is the next one?

A. I believe whether I was or if I knew any of counsel.

The Court: Yes. Whom do you know?

A. I don't exactly know them although I can identify Mr. Regal. I was in court several times when he was present and I believe on one occasion I have met Mr. Burdell, although I don't know either of them.

The Court: The meeting with Mr. Regal, as I understand it, was a courtroom association?

A. That is correct.

The Court: The meeting with Mr. Burdell, if it did happen, was a business or social meeting in your recollection?

A. It was actually neither. Just sort of a passing.

The Court: Was there anything about that relationship with either of these gentlemen that would cause you any embarrassment to sit as a juror in this case?

A. None.

The Court: Now any of the other questions that I asked, would you have answered any of them in the affirmative?

A. I believe there was a question whether I had heard anybody make any statement as to the guilt or innocence.

The Court: Did anybody make any statement, firsthand information, of Mr. Beck's guilt or innocence?

A. The answer is no.

The Court: I assume, and am I correct in assuming that your remark of hearing statements refers to something in the newspaper or on TV or radio?

[fol. 380] A. Social group discussions, offering opinions.

The Court: Is there anything about the nature of the case, the fact that grand larceny is charged or that it is a criminal case that would make you start out in this trial with any bias one way or another?

A. No.

The Court: In view of all that has transpired with respect to my examination of the jurors and with respect to counsel's examination of jurors, do you know of any reason why you could not try this case fairly and impartially!

A. No.

Ca

The Court: Gentlemen, you may inquire.

Voir dire examination.

By Mr. Regal:

Q. Mr. Evans, how long have you been on jury duty!

A. This is my fourth week.

Q. You have never served on a case that I tried!

A. I believe that is correct.

Q. But you have been in the courtroom when I have been trying a case?

A. Yes, I have been called on the original panel of eighteen.

- Q. The Court asked you whether or not that association would embarrass you. Would that association embarrass me?
 - A. I don't believe so.

Q. Your association with Mr. Burdell, was that in a

business way or social?

- A. Practically neither. Just in passing. I was intro-[fol. 381] duced to him. You would call it social, I would imagine.
- Q. You were not able to form any lasting impression that might influence you in this case!

A. None whatsoever.

Q. What kind of work do you do?

A. I am employed by the General Insurance Company.

Q. What work is that? What do you do for them?

A. I am in charge of the rate filing department. It is the department that operates as the liaison between the companies and the insurance commissioners of each state.

· Q. How long have you been with General Insurance!

A. Since 1940.

Q. That is about seventeen years. That pretty well

covers your working career, doesn't it?

- A. Just about. There were several years during that time I was out in the service and prior to that time I worked in a lumber mill in Canada.
 - Q. Are you an American citizen?

A. Born in the United States.

Q. Your stay in Canada was just a visiting worker!

A. No, I lived there for sixteen years.

Q. For sixteen years?

A. Yes.

Q. How old are you, Mr. Evans?

A. 37.

- Q. And how old were you when you lived in Canada?
- A. From the age of four until the age of twenty.
- Q. Then you came back to this country?

A. That is correct.

[fol. 382] Q. Have you lived in Seattle all the time!

A. Outside of the war years and four years in Tacoma.

Q. What schooling have you had, Mr. Evans?

A High school.

Q. And you have been with General Insurance for seventeen years?

A. That is correct.

Q. Did you hold a job with General Insurance at any time that required or that would require you to belong to a union?

A. No.

Q. You never did?

A. No.

Q. Have you ever belonged to a labor union?

A. No.

Q. Have you ever had any experience with labor unions at all that would influence you in this case?

A. No.

Q. Are you married, Mr. Evans?

A. Yes, I am.

Q. Do you have children, sir?

A. Three children.

Q. How old are they?

A. 13, 14 and 2.

Q. Does your wife work?

A. No, she doesn't.

Q. Has she ever worked since you have been married!

A. No, not since we have been married.

Q. Did she work prior to her marriage?

A. Yes.

[fol. 383] Q. Do you know the nature of the work she did?

A. I believe during the war she was an electrician's helper out at the airport.

Q. That is about all you know about her work?

A. Yes.

Q. Nothing occurred as far as her work is concerned that would tend to influence you one way or another in this case?

A. No.

Q. Is this your second or fourth week?

A. Fourth week.

Q. Have you sat on a jury trying a criminal case before!

A. I have.

- Q. What was the nature of that case, sir, or those cases if it was more than one?
 - A. Only those that went to the jury?

Q. Yes.

- A. Only one. It was a negligent homicide case. The others were four charges involving drunk in public, reckless driving, driving while intoxicated, and driving without a license.
 - Q. That was in Justice Court or a Police Court appeal?

A. That is correct.

Q. Did anything occur during the course of those trials that would tend to prejudice you against anyone?

A. No.

Q. Or against the prosecuting officials, whether it be city or state?

A. No.

Mr. Regal: Pass Mr. Evans, Your Honor, for cause. [fol. 384] Mr. Burdell: We will accept Mr. Evans. Perhaps I had better ask a question or two for Mr. Regal's benefit.

[fol. 1262] ABGUMENT BY MR. BURDELL ON BEHALF OF DEFENDANT (EXCERPTS)

Mr. Burdell: Counsel, Your Honor, Ladies and Gentlemen of the Jury, • • •

[fol. 1263] I think, for example, when Mr. Devin testified he intended and tried and meant to tell the truth about these statements made by Mr. Beck in the Grand Jury room when Mr. Beck came down when this transaction was first revealed in the public press.

[fol. 1266] I am going to try to summarize this case just as sincerely and as honestly and conscientiously as my heart and spirit will let me. I think I can do it. I think I can do it.

Now one of the things that you told me when I asked you questions in connection with this impanelment of the jury,

one of the things you told me was that you could consider this case on its merits and that you would not be influenced, you would not be biased, you wouldn't be prejudiced, by the rumors and the gossip and the frenzied, insane propaganda that could have been created only by somebody with the insanity of a Goebels has created about Mr. Beck. You told me you could consider this case as a \$1900 larceny case. I pray that you can do that.

It will be difficult for you, I know, because I know that no matter what you told me, no matter what you told me, your minds must be subconsciously influenced by the tremendous amount of unfavorable publicity that has been circulated about Mr. Beck, almost to the point of saturation of the public press and the radio and the newspapers, re-

peated and repeated and repeated; the Nazi system.

It is tremendously difficult not to be impressed by those things but I pray that you can consider this case as nothing more than a \$1900 larceny case and I will show you it isn't even that. It is not an effort to get Dave Beck or [fol. 1267] it shouldn't be an effort to get Dave Beck or it shouldn't be considered as the first opportunity that anybody has had to put Dave Beck in jail. This case is just like any other \$1900 grand larceny case. He should not be convicted because he is the president of the International Brotherhood of Teamsters. He should not be convicted because some group of United States senators find it convenient all of a sudden to utilize the airways and the radio and the television and the newspapers to somehow make some political capital and make political gain. He should not be convicted because the International Brotherhood of Teamsters is a powerful organization or because you think it is too big or too strong. Standard Oil Company was once too big and too strong and too powerful but nobody ever put John D. Rockefeller in jail for supposedly stealing \$1900 just because the Standard Oil Company was a gargantuan monopoly with too much power and too much strength.

[fol. 1273] He probably never heard of Duffy until this matter came up. Duffy testified that he had never seen or talked to Dave Beck until he got on the witness chair and

was facing Dave Beck, but nevertheless Mr. Beck testified, as he did before the Grand Jury, as he did before the Grand Jury without a lawyer, without a judge, in the presence of four representatives of the Prosecuting Attorney, Mr. Beck testified that, yes, he authorized the sale of that car. He authorized the sale of that car.

[fol. 1280] You must realize by now, too, this is a sort of an interesting thing. I wonder if some of you by now haven't discovered why it is important for people to take the Fifth Amendment. I used to wonder about that myself when I was on the prosecution side of the table, which I was for a number of years. I used to get just as inflamed and incensed about people asserting their rights under the Fifth Amendment as Larry Regal does. I couldn't understand it. Why aren't they willing to come in and talk? I know now. I know now. I know that every time you open your mouth the English language is not precise enough for you to express just exactly what you mean or for you to understand just exactly what the interrogator means or for you to have an exact meeting of the minds. You must see this in your everyday life. You tell your children something, they misunderstand, and the first thing you know [fol. 1281] you have a big hassle. Your boss tells you to do something, you don't quite understand and the first thing you know you have a big hassle. Finally you get it straightened out because you can sit down and say, "I meant this, I misunderstood you." You get it worked out.

But when you go before a Grand Jury or a court and all you can do is answer the questions put to you by the prosecutor and you don't have an opportunity to say what you mean, you don't have an opportunity to explain—

Mr. Regal: Your Honor, I object to Counsel's argument. He has been outside the record for quite a few minutes. I ask that Counsel be advised to talk about the evidence in the case and not about all of these extraneous matters not before the jury.

Mr. Burdell: I think, if the Court please, there was evidence in this case which warrants a discussion of the consideration of a sideration of

sideration of prior testimony.

[fol. 1302] Point four, Mr. Beck testified and he appeared before the grand jury without a judge, without a lawyer, and before four prosecuting attorneys.

[fol. 1304] Then they wanted us to call Fred Verschueren. Of course, Fred Verschueren is here, he can be called, but there was a clear and honest reason that I did not call Fred Verschueren, the man that Mr. Beck gave the cash to to hold. For one thing, I didn't see any sense in putting Fred Verschueren on that stand and having him testify and having the prosecution say to you, "Well, because he works for-Mr. Beck he must be a liar," which is what they unfortunately are doing. Why should I expose Fred Verschueren, Jr. to that sort of attack? According to the prosecution's theory, any testimony that we put on favorable to Mr. Beck or that they put on favorable to Mr. Beck is false. So what could I do! I did the best thing I could, I got my young law partner, Bill Wesselhoeft, who had been sent by me to confirm this very fact before we had anything to do with it, who had been sent by me to go down there to Fred Verschueren and look in that safe that Frank Brewster referred to and find out if money was there, if cash was there, if the cash was there that Mr. Beck said he gave to Mr. Devin and Mr. Wesselhoeft testified, yes, he went down, contacted Fred Verschueren, he went into the safe and there was the cash.

[fol. 1316] ARGUMENT BY MR. REGAL ON BEHALF OF THE STATE (EXCERPTS)

He tells us that he wants to protect Mr. Verschueren, Jr. Mr. Verschueren, Jr., you will recall, testified before the grand jury. There was testimony to that effect here. Mr. Beck testified before the grand jury and the grand jury wasn't made up of four ogres who were breathing down the neck of anybody. It was made up of seventeen people just like you, seventeen citizens selected to sit on that grand jury and seventeen people after they heard the testimony of Mr. Regal and Mr. Verschueren, Jr. returned an indict-[fol. 1317] ment and that is what you are trying here today.

Now the question is, in Mr. Burdell's strategy, should he take Mr. Beck and put him on the stand and have him explain this which he didn't do and could he bring Mr. Verschueren, Jr. in to have him explain this which he didn't do, because he felt most likely, we can assume he felt this way, if I do that, I really am sunk, so what I have to do is to try to talk the jury into assuming things from these little bits of evidence that I can bring in with witnesses of some stature in the community.

[fol. 1332] But now we get down to the point where everything is deadly serious. You have a tremendous responsibility. Counsel refers to all of this terrible publicity. It is true. The eyes of the entire world probably are upon you right now and the evidence that has been presented here against this defendant has been widespread. There is no question about that. You should return a proper verdict, that is your responsibility. You are the ones that are going to have to look at yourselves the rest of your lives. You are the ones that are going to have to be with your neighbors and friends and hold your head up high and say, "I did what my heart and mind told me." You are not to be influenced at all by any sympathy or prejudice. Nothing at all can be considered by you except the evidence from this witness stand.

[fol. 1704]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

No. 104594

In the Matter of the King County Grand Juby

Proceedings in Open Court

Be It Remembered That on the 20th day of May, 1957 at 9:30 a.m., the matter of the impaneling the Grand Jury for King County, State of Washington, came regularly on before the Honorable Lloyd Shorett, one of the judges of the Superior Court of the State of Washington for King County.

APPEARANCES

The following were present: Charles O. Carroll, Esq., Prosecuting Attorney for King County; William F. Devin, Esq., Special Deputy Prosecuting Attorney; Victor D. Lawrence, Esq., Assistant Special Deputy Prosecuting Attorney; and Laurence D. Regal, Esq., Deputy Prosecuting Attorney.

Whereupon, the following proceedings were had and done, to-wit:

[fol. 1705]

IMPANELING OF THE GRAND JURY

The Court: May I have the attention of all those who have been summoned here as grand jurors today. I wish to call your attention to the statute regarding the qualifications of a juror. A juror must be an elector and taxpayer of the State; he must be a resident of King County for more than one year; over twenty-one years of age; in full possession of his faculties and of sound mind; be able to read and write the English language.

Are there any jurors here who do not possess those qualifications.

This does not need to be reported, madam reporter.

(Off the record proceedings hearing jurors desiring to be excused.)

The Court: The clerk will please call seventeen grand

jurors.

The Clerk: Arthur W. Hannes; M. Edythe Dennis; Erwin M. Wallace; William D. Haley; Lewis Wing Benson; Opal Hill; Robertson Coit; Henry J. Brady; Reginald E. Washington; Ralph Cornealus Moreau; Bruce W. Johnston; Robert A. Mabe; Genevieve Lamb.

Mrs. Lamb: That is change to James. I have re-married. The Clerk: Alma M. Kottsick; Lewis E. Eyman; G. J.

Hagan: R. A. Gamble.

The Court: Now, Mr. Hannes, would you tell us your business.

Mr. Hannes :- I am unemployed.

The Court: You said you had worked for the Port of [fol. 1706] Embarkation.

Mr. Hannes: For fourteen years, as a tug boat captain. The Court: Have you ever been a member of the Teamsters Union or the Retail Clerks, or any affiliated union? Mr. Hannes: No sir.

The Court: Are you acquainted with any officer of the Teamsters Union?

Mr. Hannes: No sir.

The Court: Have you ever been an officer in any union?

Mr. Hannes: No sir.

The Court: Is there anything about service on this grand jury that might embarrass you?

Mr. Hannes: I believe not.

The Court: The bailiff calls my attention to the fact that I have not asked the jurors to be sworn. There is no statutory requirement on that, but perhaps to be safe and use a little extra caution, I am going to ask you all to stand and be sworn.

(Grand Jury panel thereupon sworn by the clerk.)

The Court: Mr. Hannes, to go back over the answers you gave before you were sworn and under oath, I assume they would be the same as you would give now?

Mr. Hannes: Yes sir.

The Court: Mrs. Dennis. Are you married!

[fol. 1707] Mrs. Dennis: I am a widow.

The Court: What did your husband do! What was your husband's occupation!

Mrs. Dennis: He was an electrician.

The Court: I assume that you belong to no union.

Mrs. Dennis: No, I never belonged to a union.

The Court: Did your husband belong to a union?

Mrs. Dennis: I think years ago he did.

The Court: Are you acquainted with any officers of the Teamsters Union?

Mrs. Dennis: 'No, I am not.

The Court: Is there anything about service on this grand jury that would embarrass you at all?

Mrs. Dennis: What is that?

The Court: Is there anything about service on this grand jury that might embarrass you?

Mrs. Dennis: No, I don't think so.

The Court: Mr. Wallace. What is your business?

Mr. Wallace: Retired.

The Court: What did you do before you were retired?

Mr. Wallace: I worked for the Engineer's Department

of the City of Seattle.

The Court: Have you ever belonged to the Teamsters Union, the Retail Clerks or any affiliated union?

[fol. 1708] Mr. Wallace: I belonged to the Teamsters.

The Court: How long ago?

Mr. Waliace: About ten years ago.

The Court: Are you conscious of any bias or prejudice arising out of that membership that would prevent you from being a fair-minded juror?

Mr. Wallace: I don't think so.

The Court: Have you ever been an officer of any union! Mr. Waliace: No.

The Court: Is there anything about sitting on this grand jury that might embarrass you at all?

Mr. Waliace: Not at all.

The Court: Mr. Haley. What is your business?

Mr. Haley: I am with the Baldwin-Lima-Hamilton Corporation.

The Court: Have you ever been a member of the Team-

sters Union, Retail Clerks or any affiliated union?

Mr. Haley: No sir.

The Court: Have you ever been an officer of any union

Mr. Haley: No.

The Court: Are you acquainted with any officers in the Teamsters Union?

Mr. Haley: No sir.

[fol. 1709] The Court: Is there anything about this proceeding that would embarrass you?

Mr. Haley: No sir.

The Court: Mr. Benson. What is your business?

Mr. Benson: I manage a real estate office.

The Court: Have you ever been a member of the Teamsters Union, Retail Clerks or any affiliated union?

Mr. Benson: I don't know. Is the Boeing Union affili-

ated?

The Court: I understand not. I don't know. Have you ever been an officer of any union?

Mr. Benson: No.

The Court: Are you acquainted with any officer of the Teamsters Union?

Mr. Benson: No.

The Court: Is there anything about service on this grand jury that might embarrass you in any way?

Mr. Benson: No, I guess not.

The Court: Opal Hill. Is it Mrs. Hill?

Mrs. Hill: Yes, Mrs. Hill.

The Court: Are you a member of the Teamsters Union, Retail Clerks or any other affiliated union?

Mrs. Hill: No sir.

The Court: Do you know any officer of the Teamsters, [fol. 1710] Union?

Mrs. Hill: No sir.

The Court: Have you ever been an officer in any union?

Mrs. Hill: No sir.

The Court: Is there anything about this proceeding that might embarrass you?

Mrs. Hill: I believe not, sir.

The Court: Mr. Coit. Have you ever been a member of the Teamsters Union, Retail Clerks or any affiliated union! Mr. Coit: No sir.

The Court: Are you acquainted with any officer of the Teamsters Union?

Mr. Coit: No sir.

The Court: Is there anything about this that might embarrass you?

Mr. Coit: No sir.

The Court: Have you ever been an officer in any union at all?

Mr. Coit: No sir.

The Court: Henry Brady. Will you tell us your business again?

Mr. Brady: I am a bookkeeper. The Court: For Malmo's?

Mr. Brady: Yes sir.

The Court: Have you ever been a member of the Teamsters Union, Retail Clerks or any affiliated union?

Mr. Brady: No sir.

[fol. 1711] The Court: Have you ever been an officer in any union?

Mr. Brady: No sir.

The Court: Is there anything about this proceeding that might embarrass you at all?

Mr. Brady: I don't believe so.

The Court: Are you acquainted with any officer of the Teamsters Union?

Mr. Brady: No sir.

The Court: Mr. Washington, what is your business?

Mr. Washington: I am an engineer for Boeing.

The Court: Have you ever been a member of the Teamsters Union, Retail Clerks or any affiliated union?

Mr. Washington: No sir.

The Court: Are you acquainted with any officer of the Teamsters Union?

Mr. Washington: No sir.

The Court: Are you now, or have you ever been, an officer of any union at all?

Mr. Washington: No sir.

The Court: Is there anything about this proceeding that might embarrass you?

Mr. Washington: No, I think not.

The Court: Mr. Moreau. I believe you are an engineer?

Mr. Moreau: And superintendent.

The Court: Have you ever been a member of the Team-[fol. 1712] sters Union, Retail Clerks or any affiliated unions?

Mr. Moreau: No sir.

The Court: Are you acquainted with any of their officers?

Mr. Moreau: No sir.

The Court: Have you ever been an officer in any union whatsoever?

Mr. Moreau: Yes sir.

The Court: What union?

Mr. Moreau: Electrical Workers Local 46.
The Court: What office did you hold?

Mr. Moreau: Executive Board.

The Court: Was there any jurisdictional dispute between that union and the Teamsters during the time you were an officer?

Mr. Moreau: Well, it is difficult for me to say. There always is certain jurisdictional disputes locally. I don't recall off-hand whether it might have been at that time.

The Court: Are you conscious of any prejudice arising

out of that union service, any bias of any kind?

Mr. Moreau: Yes.

The Court: You feel that your jury service might em-

arrass youf

Mr. Moreau: It wouldn't embarrass me, it might embarrass somebody else. I am prejudiced to this particular case after reading the newspapers and watching television and [fol. 1713] comments. I form my own opinion.

The Court: Bruce W. Johnston. Have you ever been a member of the Teamsters Union, Retail Clerks or any affili-

ated union?

Mr. Johnston: Retail Clerks. The Court: When was that? Mr. Johnston: About ten years ago.

The Court: Were you an officer in the Retail Clerks?

Mr. Johnston: No.

The Court: Are you acquainted with any officer in the Teamsters Union?

Mr. Johnston: No, I am not.

The Court: What is your business?

Mr. Johnston: I am salesman for Sears Roebuck.

The Court: How long have you been with Sears Roebuck!

Mr. Johnston: Ten years.

The Court: Would service on this grand jury in any way embarrass you?

Mr. Johnston: Well, perhaps you misunderstood me. I

am presently a member of the Retail Clerks.

The Court: Well, would service here embarrass you just because you are a member of the Retail Clerks?

Mr. Johnston: No, I don't believe so.

The Court: You don't know of any way that might upset [fol. 17:4] you?

Mr. Johnston: No, I don't.

The Court: Mr. Mabe. Would you tell us your business again?

Mr. Mabe: Machinist and maintenance.

The Court: Have you ever been a member of the Teamsters Union, Retail Clerks or any affiliated union?

Mr. Mabe: Truck driver, I was a member of the truck

drivers.

The Court: How long ago!

Mr. Mabe: About twenty years since I dropped out and joined the cannery workers.

The Court: That wouldn't affect you in any way here,

I assume.

Mr. Mabe: I have been a cannery workers board member

for almost twenty years.

The Court: Have they had any jurisdictional dispute or other disputes with the Teamsters Union?

Mr. Mabe: No.

The Court: Is there anything about service on this jury that might embarrass you?

Mr. Mabe: Well, I don't know.

The Court: How is that?

Mr. Mabe: I don't know. I am awful prejudiced on the

case is all I can say. I followed it from-

The Court: You said you are a member of the Executive Board of the Cannery Workers Union! [fol. 1715] Mr. Mabe: Yes.

The Court: Have been for many years?

Mr. Mabe: Nearly twenty years.

The Court: And you asked to be excused a few minutes agof

Mr. Mabe: Yes.

The Court: Mrs. James. I assume you are married, since you said you were. What does your husband do!

Mrs. James: He is an employee of Boeing. So am I. The Court: Does he belong to the Teamsters Union, Retail Clerks or any affiliated union?

Mrs. James: No.

The Court: Have you ever belonged to any union?

Mrs. James: We both belong to the Aeronautical Lodge is all.

The Court: Are you acquainted with any officers in the Teamsters Union!

Mrs. James: No. I am not.

The Court: Have you ever been an officer in any union at all ?

Mrs. James: No.

The Court: Is there anything about this service that might embarrass you?

Mrs. James: Nothing I could ever think of. The Court: Mrs. Kottsick. You are married?

Mrs. Kottsick: Yes, I am.

[fol. 1716] The Court: What is your husband's business?

Mrs. Kottsick: Electrician. The Court: Do you work!

Mrs. Kottsick: Well, yes. I don't belong to a union. I work at sewing.

The Court: Does your husband belong to the union?

Mrs. Kottsick: Yes, he does.

The Court: Has he ever been a member of the Teamsters Union, Retail Clerks or any affiliated union?

Mrs. Kottsick: He belongs to the Electrical-Union, Local

The Court: That is not affiliated with the Teamsters.

Mrs. Kottsick: No, it is not.

The Court: Has he been an officer of that union?

Mrs. Kottsick: No, he hasn't.

The Court: Is there anything about service on this jury that might embarrass you?

Mrs. Kottsick: I don't believe so.

The Court: Now, Mr. Eyman. You have been with Seattle Shingle for a long time.

Mr. Eyman: Yes sir.

The Court: I believe you previously stated that it would be a hardship on your company if you had to serve on a jury.

Mr. Eyman: Yes sir.

[fol. 1717] The Court: And I had refused to excuse you.

Mr. Eyman: Yes.

The Court: Mr. Eyman, have you ever been a member of any union, Teamsters Union or Retail Clerks?

Mr. Eyman: No sir.

The Court: Are you acquainted with any officer of the Teamsters?

Mr. Eyman: No sir.

The Court: Does your company employ a number of members of the Teamsters Union?

Mr. Eyman: I believe they are all members of the Sawmill & Lumber Workers, A.F.L.

The Court: Are you conscious of any bias, prejudice or sympathy in this case at all?

Mr. Eyman: That is pretty hard to answer.

The Court: Do you feel if you were required to sit here as a juror you could do so, analyzing the evidence and doing what is right and fair?

Mr. Eyman: Yes sir.

The Court: Is there anything about service on this jury that might embarrass you?

Mr. Eyman: No sir.

The Court: Mr. Hagan. What is your business?

Mr. Hagan: I am the assistant secretary of the Washington State Senate.

The Court: When the Senate is not in session what do

[fol. 1718] you do?

Mr. Hagan: We haven't concluded our work.

The Court: That lasts for a much longer time after the session is over?

Mr. Hagan : Yes.

The Court: Have you ever been a member of the Teamsters Union, Retail Clerks or any other affiliated union?

Mr. Hagan: Yes sir.

The Court: Are you now?

Mr. Hagan: Not the Teamsters.

The Court: Which one!

Mr. Hagan: Not the Teamsters.

The Court: You said you had been a member of some affiliated union?

Mr. Hagan: Local 44, Garage Employees.

The Court: Is that affiliated with the Teamsters?

Mr. Hagan: Yes sir.

The Court: Are you acquainted with any officers of the Teamsters Union?

Mr. Hagan: Yes.

The Court: Do you feel that service on the grand jury here would in any way embarrass you at all?

Mr. Hagan: No, I don't.

The Court: Have you ever been an officer of a union?

Mr. Hagan: No, I haven't.

[fol. 1719] The Court: Mr. Gamble. What is your business?

Mr. Gamble: I work for the Northern Pacific Railway.

The Court: How long have you been with them?

Mr. Gamble: Oh, about forty-seven years.

The Court: Have you ever been a member of the Teamsters Union, Retail Clerks or any affiliated union?

Mr. Gamble: No.

The Court: Are you acquainted with any officers of the Teamsters Union?

Mr. Gamble: No.

The Court: What do you do with the Northern Pacific?

Mr. Gamble: District Material Inspector.

The Court: What does that mean?

Mr. Gamble: Well, it is the inspecting of the materials, bridges, buildings and materials they use.

The Court: Are you an engineer?

Mr. Gamble: Well, not quite; I do that work.

The Court: Is there anything about service on this jury that might embarrass you in any way?

Mr. Gamble: No.

[fol. 1720] The Court: The following grand jurors will be excused and may step down: Ralph C. Moreau, Bruce Johnston; Robert Mabe; Lewis Eyman; G. J. Hagan.

The clerk will please call five additional jurors. First for

number ten.

The Clerk: George P. Ostroth.
The Court: Number eleven.
The Clerk: Floyd H. Raymer.
The Court: Number twelve.
The Clerk: Eugene L. Johnson.
The Court: Number fifteen.
The Clerk: Clarence W. Scott.
The Court: Number sixteen.
The Clerk: Russell D. Webb.

The Court: Will the new jurors please stand and raise your right hands and be sworn?

(Additional jurors sworn by the clerk.)

The Court: Mr. Ostroth, what is your business?

Mr. Ostroth: I am an engineer. I work for the Corps of Engineers, United States Army.

The Court: Have you ever belonged to the Teamsters

Union, Retail Clerks or any affiliated unions?

Mr. Ostroth: No sir.

The Court: Are you acquainted with any officers of the Teamsters Union?

Mr. Ostroth: No sir.

The Court: Is there anything about service on the grand jury that might embarrass you at all?

[fol. 1721] Mr. Ostroth: No. I would like to ask a question, if I may.

The Court: Yes.

Mr. Ostroth: Friday I became aware of a position out of the state I would like to have and I thought I would apply for it. I have no way of knowing whether I would be accepted or not or when I would go, but I thought I would like to say that.

The Court: It may entail some sacrifice to be a member of this jury, however, I feel I cannot excuse you on that ground.

Floyd Raymer, I talked to you a few minutes ago. What

is your business again?

Mr. Raymer: Auto parts.

The Court: Have you ever been a member of the Teamsters Union, Retail Clerks or any affiliated union?

Mr. Raymer: Yes sir.

The Court: Are you a member now?

Mr. Raymer: I am.

The Court: Of which union?

Mr. Raymer: Local 44.

The Court: Local 44, is that the retail— Mr. Raymer: That is the Garage Employees.

The Court: Are you acquainted with any officers of the

Mr. Raymer: Yes.

The Court: Which one?

[fol. 1722] Mr. Raymer: Bill Ray of our own local and Bill Richardson.

The Court: Is there anything about service on this grand jury that would embarrass you?

Mr. Raymer: Not that I know of, sir.

The Court: Have you ever been an officer of the Garage Employees Union?

Mr. Raymer: No sir.

The Court: Eugene L. Johnson. Mr. Johnson, we have talked to you several times.

Mr. Johnson: Yes sir.

The Court: We know all about your business and everything. I am going to ask you one or two more questions. Are you acquainted with any officer of the Teamsters Union?

Mr. Johnson: Yes sir. The Court: Which one?

Mr. Johnson: Bill Williams, he is secretary, I believe. The Court: Is there anything about service on this jury that would embarrass you?

Mr. Johnson: Not that I know of, sir.

The Court: Have you ever been an officer in the Carpenters Union?

Mr. Johnson: No sir.

The Court: How long have you lived here!

Mr. Johnson: In Seattle since 1946, as soon as I got out of the service.

The Court: Clarence W. Scott. Would you state your business?

[fol. 1723] Mr. Scott: Superintendent of Cadman Gravel-Company.

The Court: Where is that located? Mr. Scott: Redmond, Washington.

The Court: Have you ever been a member of the Teamsters Union or Retail Clerks?

Mr. Scott: Yes.

The Court: The Teamsters Union?

Mr. Scott: The Teamsters.

The Court: Are you a member now?

Mr. Scott: No.

The Court: How long since you have been a member?

Mr. Scott: Ten years.

The Court: The last ten years you have been superintendent?

Mr. Scott: Yes.

The Court: Are you acquainted with any officer of the Teamsters Union?

Mr. Scott: Yes.

The Court: Which one! Mr. Scott: All Crowder.

The Court: You are not acquainted with Mr. Brewster

or Mr. Beck!

Mr. Scott: No.

The Court: Have you ever been an officer of that union!

Mr. Scott: No.

The Court: Is there anything about service on this grand jury that would embarrass you?

[fol. 1724] Mr. Scott: No.

The Court: Russell Webb. Will you state your business.

Mr. Webb: Civil engineer.

The Court: By whom are you employed?
Mr. Webb: State Department of Fisheries.

The Court: Have you ever been a member of the Teamsters Union or Retail Clerks or any affiliated union?

Mr. Webb: No.

The Court: Have you ever been an officer of any union at all?

Mr. Webb: No sir.

The Court: Is there anything about service on this grand jury that might embarrass you?

Mr. Webb: Not to my knowledge.

The Court: Mr. Johnson, I am going to excuse you, partly as a hardship case anyway. You may step down.

The clerk will call another juror. The Clerk: Andrew C. Dalgleish.

The Court: Mr. Dalgleish, it looks like you got called right at the last moment here.

Have you ever been a member of the Teamsters Union or Retail Clerks?

Mr. Dalgleish: No.

The Court: Are you acquainted with any officer of those unions?

Mr. Dalgleish: I am acquainted with, I believe he is an [fol. 1725] officer of the Retail Clerks, Archie McLean. That is through a neighborhood acquaintance ten years ago.

The Court: I am sorry but I just don't have in mind

what you told me your business was?

Mr. Dalgleish: I am engineer for the Sperry Gyroscope Company in a supervisory capacity.

The Court: You said you had been with them for a

number of years?

Mr. Dalgleish: Seventeen years in February.
The Court: How long have you been in Seattle?

Mr. Dalgleish: I was born here in 1911, that is forty-six years:

The Court: What school did you attend?

Mr. Dalgleish: Franklin and Foster and my engineering degree I got from practical experience and through the

company.

The Court: I suppose that your business is such that if you had a week or two now and then, this jury had a week or two now and then when the jury wasn't in session you could attend to your business and then come back here for a session and at least be some help to your business?

Mr. Dalgleish: Yes. Of course, a lot of my work I have to do after hours. How long does the session last in the

daytime, how many hours?

The Court: Ordinarily it would last probably from 9:30 to 4:00, although that is a matter that depends a lot upon [fol. 1726] what witnesses are available and just what matter the jury might be inquiring into, what the investigating staff has ready in the way of evidence, but a person can do some work after hours and on days when the jury is not in session, that is quite true.

Mr. Dalgleish: When the jury is not in session may I

leave the state?

The Court: Yes.

Mr. Dalgleish: Down to Oregon or Alaska.

The Court: If you are available on a few days notice or maybe two days notice, something like that.

I want to go back and ask Mrs. Dennis a question.

Mrs. Dennis, do you have any difficulty hearing? This courtroom is a very difficult courtroom to hear in. If you leave the windows open the trucks make a lot of noise and if you don't leave them open, it gets too warm.

Mrs. Dennis: Well, today I have because I had a little

cold.

The Court: Just on account of your cold?

Mrs. Dennis: Not usually, I don't usually. I don't have any trouble usually.

The Court: You think you would have no difficulty in

hearing if you were on this jury?

Mrs. Dennis: No.

[fol. 1727] The Court: You are in good health?

Mrs. Dennis: Oh yes.

The Court: The jurys now in the jury box will constitute the grand jury. Will you please rice, raise your right hands and be sworn.

(The grand jury sworn by the court.)

COURT'S CHARGE TO GRAND JURY

The Court: Members of the grand jury. What are the duties of the grand jury! Why has it been called! How does it operate! What may it hope to accomplish! These

and similar questions may be running through your minds now that you have been selected and sworn as grand jurors. Perhaps the answers to these questions could be better

Perhaps the answers to these questions could be better understood if first I told you a little of the history of the

grand jury system.

The institution of the grand jury comes to us from the common law of England where the grand jury's original function, curiously enough, was to stand as a buffer between the King of England and the citizens. Its purpose was to prevent unjust prosecutions by the Crown, and the King had no power to charge a person with a crime without first obtaining an indictment from a grand jury composed of fellow citizens of the accused.

The grand jury system was brought to this country by the first settlers from England, but its use has been greatly limited in recent years, and in many states, like our own, it has been used so seldom that most people, even attorneys, are unfamiliar with its procedure and only

vaguely acquainted with its underlying purpose.

[fol. 1728] The grand jury is an investigative body possessed of the power to require the attendance of witnesses and to subpoen books, records and similar documents. Its function is to inquire into the commission of crime in the county. Ordinarily this can be done by the regularly established law enforcement agencies such as the prosecuting attendance of witnesses or compel them to testify, and he cannot subpoen a books and records. As I shall later explain, the matters you have been called to investigate require the exercise of the peculiar powers granted to grand juries.

Now how does the grand jury operate? During your investigation there will be no judge present here in the court-room with you except on rare occasions, such as, if and when you return an indictment. The foreman of the grand jury, whom I will appoint, will occupy the judge's chair and you will elect one of your members to serve as secretary or clerk to keep the minutes of your proceedings. Such secretary may occupy the chair ordinarily used by the court clerk. The other jurors will be seated in the jury box. The

prosecuting attorney and the special prosecutors will be in

attendance, as will a court reporter.

The prosecutors will call witnesses and your foreman will administer the oath to each witness before such witness testifies. The prosecutors will interrogate the witnesses and confer with you on questions of law and procedure. After hearing the evidence on a particular charge, you will [fol. 1729] then exclude the prosecutors and the court reporter and vote to see if an indictment or formal criminal charge should be made. If twelve or more of you vote to return an indictment you will advise the prosecutors, who will prepare the necessary papers. You will have the indictment signed by your foreman and present it in open court.

Your deliberations are secret and you are forbidden by law to disclose the vote, or even the discussion, on any question before you. A grand jury may not be called to testify as to any statement made by any other grand jury, the manner in which any other juror voted, or even the question

before the jury.

The law requires each grand jury to visit the county jail, to examine its state and condition, to inquire into the discipline and treatment of prisoners, their habits, diet and accommodations, and report to the court in writing whether the jail rules which the judges have made have been faithfully kept and observed. A copy of these rules will be handed to your foreman.

The law further provides:

"The grand jury shall especially inquire as to the offense of any person confined in prison on a criminal charge; into the condition and mismanagement of the public prisons in the county; into the wilful misconduct in office of public officers, and shall in their discretion examine the public records of the county."

"The grand jury are not bound to hear evidence for the defendant; but it is their duty to weigh all the evidence submitted to them, and when they have reason to believe that other evidence within their reach will explain away the charge they should order such evidence to be produced, and for that purpose may cause process to issue for the witnesses." [fol. 1730] "If a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he must declare the same to his fellow jurors, who may thereupon investigate the same, if a majority so order."

"No complainant who may institute a prosecution shall be competent to be present at the deliberations of a grand jury, or vote for the finding of an indict-

ment."

"No grand jury shall disclose the fact that an indictment for a felony has been found against any person . . . until such person has been arrested."

Some of these powers granted to the grand jury should be exercised sparingly, or not at all. For example, it is unlikely that any benefit could come from your examination of the public records of the county. They are so voluminous and such special knowledge would be required to understand and evaluate them that your efforts would probably be entirely wasted.

We come now to the purpose of this grand jury and the reasons which the judges of this court thought sufficient to justify the expense to the county, and the inconvenience to and sacrifice by you, which this grand jury session will

require.

It seems unnecessary to review the recent testimony before a Senate Investigating Committee except to say that disclosures have been made indicating that officers of the Teamsters Union have, through trick and device, embezzled or stolen hundreds of thousands of dollars of the funds of that union—money which had come to the union from the dues of its members. It has been alleged that many of these transactions, through which the money was siphoned out [fol. 1731] of the union treasury, occurred in King County. Such crimes, if committed, nannot be punished under Federal law, or under any law other than that of the State of Washington, and prosecution must take place in King County. The necessary criminal charges can only be brought in this county upon indictment by the grand jury or information filed by the prosecuting attorney.

The president of the Teamsters Union has publicly declared that the money he received from the union was a loan which he has repaid. This presents a question of fact.

the truth of which is for you to ascertain.

You may find that many of the transactions happened more than three years ago: this would raise the question of the statute of limitations, which ordinarily bars a prosecution for larceny after three years. There are some instances, however, where the period is extended. This is a question of law and you should be guided by the advice of the prosecutors on this and similar questions. Your investigation may conceivably result in the adoption of better standards of conduct for union officials.

Some other inquiries suggested by the Senate investigation are the relationship between the officers of the Teamsters Union and a certain insurance broker; an alleged conspiracy between business men and Teamster officials in fixing prices; and the influence wielded by Teamster officers

through campaign contributions to public officials.

To completely investigate all of these items may be beyond the energy and endurance of yourselves, the prose-[fol. 1732] cutors and their investigating staff. The financial burden of such a complete investigation may be beyond the resources of King County. I urge you to do all that you can within practical limitations to ascertain the truth or falsity of these charges.

You will doubtless receive numerous requests to investigate many matters other than those for which this grand jury was called. This you have a right to do, but I feel that a word of caution should be given you in this regard. Permit me to quote the words of the late Judge

J. T. Ronald, given to a grand jury in 1931:

"Experience shows that Grand Juries with the best of intentions, unless guided by some policy, some system, directed by some experience, are prone to spend time and public funds without producing substantial results; while on the other hand a Grand Jury imbued with common sense, possessing discernment and ability to weigh testimony, may become a most efficient inquisitorial instrumentality-discovering truth though concealed in falsehood-detecting falsehood though interwoven with truth. You will act the role of an efficient, expeditious, investigating agency, or you will stage an expensive, useless, uninteresting farce, according as you may measure up to this standard."

I suggest to you that the scope of your inquiry into fields other than the Teamsters Union be largely restricted to those matters suggested as worthwhile by the prosecutors, who are skilled and experienced attorneys and always available to you for legal advice. The court is also ready

to consult with you on legal questions at any time.

The prosecutors advise me that it may be necessary and desirable that you recess for a period of two or three weeks [fol. 1733] in order that their investigating staff may serve subpoenas on witnesses and make certain preliminary investigations. You should confer with the prosecutors regarding this and agree with them upon the necessary period of recess and adjourn until the date fixed.

The foreman of your grand jury should administer the oath to each witness, and a form of the oath to be administered will be handed to him. The court appoints Andrew

Dalgleish as foreman of this grand jury.

Now, members of the grand jury, that is all I have to say to you in the way of a formal charge. I think you all realize that your names have been selected right from the jury list which in turn is picked from the voters' registration books. You have a most serious task to perform and I know you realize it is being performed, and is to be performed, by a grand jury picked at random from among the citizens in this community, and thus we hope to keep the law close to the people. It is a tremendous responsibility, and I wish you well in your work.

I will now retire and the audience will be excluded from the courtroom. The court reporter is Mrs. Louise Sartor, who sits here next to you. I should like to introduce the prosecutors to you. Charles O Carroll is the prosecuting attorney for King County. William F. Devin, is special prosecuting attorney for the grand jury. His assistant is Mr. Victor D. Lawrence. Mr. Regal will be with them too. [fol. 1734] Mr. Regal is a regular deputy prosecuting attorney and he will be working with the grand jury also.

The clerk will leave with the foreman of the grand jury sufficient forms for each juror to fill out, giving his name and address and certain other information which the clerk

needs. If you will do that as the first order of business. Mr. Dalgleish, you will sit up here and I will leave this form of oath. I will also leave a form of affirmation, occasionally you encounter witnesses who for religious reasons, do not wish to swear, but will affirm. The affirmation is here also. You will administer the oath to each witness with his hand raised, just as I did. A little later I will give to you a copy of the rules which the judges have made for the conduct of the county jail, since that is one of the requirements. I have them right here and I will leave them here too.

All the jurors who were called and have not been seated as members of the grand jury will be excused and need not report again.

I will retire at this time, and the audience will leave the

courtroom.

(End of Proceedings in Open Court.)

[fol. 1735] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 1736]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

No. 104594

IN THE MATTER OF THE KING COUNTY GRAND JUBY

Testimony of Jack Stratton Taken June 19, 1957

Be It Remembered that on the 19th day of June, 1957 Jack Stratton was called as a witness before the King County Grand Jury, and pursuant to permission granted by the Supreme Court of the State of Washington, and by Order Granting Defendant Permission To Transcribe Certain Portions of Grand Jury Testimony, dated the 30th day of April, 1958, the following transcript of his said testimony is furnished:

JACE STRATTON called as a witness, being duly sworn on oath, testified as follows:

Direct examination.

By Mr. Regal:

- Q. Will you tell us your full name?
- A. Jack Stratton.
- Q. How old are you?
- A. Twenty.
- Q. Your father is John Stratton?
- A. Yes.
 [fol. 1737] Q. He is the gentleman that appeared here yesterday?
 - A. Yes.
 - Q. You saw his picture in the paper last night.
 - A. Yes.
- Q. Did you work at one time for the Sunset Automotive in Ballard?
 - A. Yes.
 - Q. Where is that located, Jack?
 - A. 49th and Leary.

Q. What did you do there?

A. Oh, a little of everything, from cleaning cars to doing a little mechanical work on them.

Q. Did you ever grease any cars?

A. Yes.

- Q. How many other people were employed there other than yourself?
 - A. Oh—

Q. If you know?

A. I don't know off-hand. It is off and on, I mean, it changes. One week it would be maybe three and the next week, maybe four.

Q. As far as you know is Kenneth Eline the proprietor

and owner of the establishment?

A. So far as I know.

Q. Is he the one who originally contracted with you for you to work there?

A. Yes.

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Q. How long had you worked there?

A. I never have worked there steady. I was going to school.

Q. What school were you going to f

Q. I didn't ask you your home address?

A. 3515 West 68th.

Q. I asked you your age, you are twenty.

A. Yes.

Q. Now, Jack, we are interested in a 1951 Cadillac, four-door sedan and you apparently talked your dad into buying it at one time. Do you recall that?

A. Yes.

Q. Do you remember when the car was brought out there to the Sunset Automotive?

A. I don't remember the day. I remember the time, I

mean, I remember the incident, yes.

Q. The car was purchased around October of '54, wasn't it?

A. That sounds about right.

Q. Did your dad buy that car shortly after it was brought out there for sale?

A. I don't believe the car was brought out there for sale. I believe I just heard about it, that it was for sale, but it wasn't brought out to be sold through Sunset Automotive.

Q. Was it brought out there for some other reason you

know of?

A. I believe Dave Beck, Jr. left his car in the garage to be worked on.

Q. For some repairs?

A. Probably a grease job.

Q. Did you ever see Dave Beck, Jr. ?

A. Oh yes, he brought his car in there to be worked on for grease jobs and service.

[fol. 1739] Q. Did you know him personally then?

A. No.

Q. Do you know him to speak to, say hello to?

A. Yes, that is about it.

Q. Did you talk to him at all about this automobile personally?

A. Oh if he—he probably—if I remember right, when he came in he probably said, "this one is for sale" or something. He might have said that to me.

Q. You don't recall whether he said it to you or some-

one else did.

A. Not for sure, no.

Q. Do you recall whether or not you had a conversation

with Ken Eline regarding the sale of the car?

A. No, I don't recall that. What I have been trying to figure out is how I did get onto it. I did know it was for sale and I had worked on the car, serviced it, seen it in there.

Q. Dave Beck, Jr. always brought it in and came and got it? As far as you knew when you saw somebody get it?

A. Either him or one of the guys picked it up downtown.

Q. Someone else?

A. Someone that worked at the shop may have picked it up.

Q. How many times had the car been in there when you

were there?

A. I really don't know.

Q. Two or three or a dozen times?

A. Probably more like two or three times.

Q. You recognized the car when you saw it?

A. Yes.

[fol. 1740] Q. It was a well kept automobile?

A. Yes.

Q. And it was in good condition as far as you knew?

A. Yes.

Q. You had transmission trouble later, didn't you, or is that true?

A. I think that is why we sold it, yes.

Q. When you found out the car was for sale did you then go to your dad immediately and tell him you wanted him to buy the automobile, or did you look at it or drive it, or just tell us what happened?

A. I don't know, I might have drove it. I took it home

that night and showed him.

Q. You did take it home that night?

A. I believe so.

Q. Had you talked to him about it before?

A. No.

Q. Had you ever talked to Ken Eline about the car or about the condition it was in or so on?

A. I might have asked his opinion as a mechanic.

Q. Well, did he tell you what the price was or did Dave Beck, Jr. tell you the price of the cart,

A. I don't remember that.

Q. Do you recall ever talking to Dave Beck, Jr. regard-

ing the automobile?

A. Oh, the only thing he might—when he came in he might have told me some little thing to check on it, or something.

Q. About the purchase of the automobile, I mean?

A. No, about the purchase directly, no.

[fol. 1741] Q. Whom did you talk to regarding the purchase of the automobile?

A. I don't know. I just know I heard it was for sale and was to be sold to anybody that wanted to buy it and I got the check for it and gave it to him and then later on—

Q. (Interposing) Gave it to whom?

A. I didn't give it, I left it down at Sunset Automotive, for him.

Q. In what manner did you leave it there?

A. I believe it was in a envelope.

Q. Where did you put the envelope, if you remember?

A. I think it was in the drawer where the office was at that time.

Q. Is there a desk in there !

A. Yes, there is a desk up against the wall.

Q. You sealed the envelope, did you? Do you recall?

A. No, I don't recall.

Q. Did you write on the outside of it.

A. I don't think I wrote on the outside of it.

Q. When you brought the envelope there did you give it to someone?

A. I don't think anybody was there at the time I brought it there.

Q. You brought an envelope and put it in a desk and didn't write on it and left it open?

A. I don't know. I don't remember that.

Q. There was a \$1850 check in the envelope?

A. That is what I understand it was, yes.

Q. That was for the cart

[fol. 1742] A. Yes.

Q. Did you take the car at that time?

A. No, I had already had the car.

Q. Did you have the title papers at that time?

A. No.

Q. Where did you get the title papers?

A. I believe they came in the mail.

Q. You don't recall ever contacting Dave Beck, Jr. or anyone else regarding the sale of the car?

A. No.

Q. And you don't recall how you ascertained the price of \$1850. There was no sign on it of any kind, was there?

A. Would you repeat that?

Q. You don't remember how you ascertained the price of

the car was \$1850?

A. No, I don't.

Q. And you don't recall talking to anyone regarding it.

A. I must have talked to somebody, but I don't remember who it was.

Q. Were there other employees there who had authority

to sell automobiles?

A. Well, I don't believe anybody had any authority to sell any automobile down there.

Q. These people you talked to, did they have authority

to sell automobiles ?

A. They probably knew it was for sale.

Q. Did you talk to more than one person regarding it down at this place?

A. I don't believe so.

Q. Was it the first day you saw the car that you took it [fol. 1742] home and showed it to your dad?

A. It probably had been sitting down there for a couple

of days, probably had some service work done on it.

Q. Where did you take it? Did you take your dad for

a ride, drive around and go back?

A. I think he took it out in the morning before he went to work and tried it.

Q. Were you there?

A. I was probably in bed.

Q. All these probabilities are not very informative, Jack. I would like to know if you remember?

A. It was probably about 6:30 in the morning, probably

before I got up.

Q. How do you know? Did he tell you?

A. I put it in the garage-and it was sitting out in the driveway and I asked my mother and she said he might have probably tried it out.

Q. Your mother didn't see him take it out?

A. I don't imagine so.

Q. So far as you know, your dad maybe never did take the car out.

A. As far as I know. I imagine he-

Q. (Interposing) Common sense would tell us he would, don't you think? I mean, ordinarily people don't spend \$1850 for a car they don't try out, do they?

A. Probably not. He would take my word for it, if I

said it was good.

Q. Are you sort of an expert on automobiles?

A. Well, I know more about it than he does.

Q. How far did you drive it when you took it out? Did [fol. 1744] you take a ride?

A. Probably from Sunset Automotive to my home, that

is far enough.

Q. You didn't take it out on the highway?

A. No, I don't believe so.

Q. How far is Sunset Automotive from your home?

A. I would say approximately two miles.

Q. So you drove the car two miles home and you say you showed it to your dad. What manner did you do that in. Did you ask him to come outside and look at it?

A. I believe so.

Q. Do you recall how you did it?

A. No, I don't.

Q. What school are you going to now?

A. At the present time I am not going to any school.

Q. Are you working now?

A. Yes.

Q. Where do you work?

A. Laminated Panels, 300 Michigan.

Q. Working full time there?

A. Yes.

Q. Going back to this transaction. After the car was brought in there somehow or other, although you don't remember how, you found out it was for sale somehow or other; and although you don't remember, you found out it was to be sold for \$1850. You found out, although you don't remember how, that it belonged to Dave Beck, Jr. and so you took the car home. Am I right?

A. That is right.

Q. And you showed it to your father, although you don't [fol. 1745] remember whether he came out and looked at it or not. Is that right?

A. He came out and looked at it.

Q. Oh he did come out and look at it?

A. He must have. You said he wouldn't spend \$1850 unless he did.

Q. That is true. You don't have counsel in here, Mr. Stratton, and just to advise you, there is nothing criminal in your father coming out and looking at the automobile, and there is flothing criminal in your father driving it, but there is something criminal in your refusing or failing to tell us the truth on anything we ask you here, that is the only thing we are concerned with now. Mr. Eline is completely exonerated, so far as I know, at this time from any criminal activity. Your dad is not in any trouble. There is no problem like that. I would suggest if you want to think a minute and zry and recall what happened, it might be advisable Lying under oath is a very serious offense and I feel your memory has been befogged somewhat, maybe you are nervous or something, but if you just sort of try to remember what happened in this thing, it will help. This is not an everyday occurrence in the life of a young man where he talks his dad into buying a car, a Cadillac, and selling his other car. You did a good job of salesmanship. You apparently are a bright boy and know a lot about cars. Your memory is bad is all. Nothing at all you are going to say here is going to implicate your dad in any way. I will ask you to reconsider your testimony now. You are under oath. Tell us the transaction as you [fol. 1746] remember it. If you wish to do that you can or

you can take this somewhat—to use the term—ridiculous idea that you remember nothing about it and are completely oblivious to all these things and how they happened. Do want to tell us now? Do you remember when the car was brought in and left there?

A. The date?

Q. No, do you remember the occurrence, the time?

A. That it was brought in there?

Q. Yes.

A. Yes, I do.

Q. Do you remember talking to Mr. Eline about it, about the automobile, about its merits and so on?

A. I said I asked his mechanical opinion.

Q. You asked him about it?

A. Yes.

Q. Who told you it was for sale?

A. That I honestly don't remember.

Q. When you took it home did your dad come out and look at it?

A. I don't believe my dad was home when I brought it home. They were out, I think.

Q. Later on when they got home, do you recall going out and showing it to them and taking them for a ride?

A. I am quite sure it was the next morning.

Q. You showed it to him the next morning?

A. I didn't show it to him, he saw it there in the garage.

Q. Were you with him at the time?

A. No, I wasn't.

Q. Do you know whether he drove it or not?

[fol. 1747] A. I am quite sure he did.

Q. Did you see him drive it?

A. No, I didn't.

Q. Did he tell you he drove it?

A. My mother told me he drove it.

Q. Your mother told you he drove it. Did you talk to your dad about it afterwards?

A. Yes.

Q. What did he say about it? Did he say it was a pretty good car?

A. Yes.

Q. Had you already told him the price of the automobile!

A. I probably had if he asked me. I imagine he asked

me, that is usually the first thing he does.

Q. That is a pretty important thing, one of the major parts of buying an automobile, how much does it cost. Did you and he check the newspapers to see what the pre-railing market appeared to be?

A. Yes, I imagine he did. I didn't check it with him, but he probably did. I had been familiar with those cars and interested in them and I probably checked it. I probably

had known what it was worth, fairly close.

Q. Did you go with your dad when he went to the bank to arrange the loan to buy the car!

A. No.

Q. When he came home did he have the cashier's check, the evening before he purchased the car?

A. I don't remember, but I would guess he did.

Q. Well, did he give you a check to deliver for the automobile?

[fol. 1748] A. Yes.

Q. You recall that transaction.

A. He gave me the check that I took down to Sunset.

Q. Where did he give it to you!

A. At home.

Q. So we can assume if he gave you a check he obtained downtown at home he must have brought it home with him.

A. Yes.

Q. It wasn't delivered by messenger.

A. No.

Q. Do you recall the transaction where he handed you the check? Did he say, "Here's the check, Jack, buy the car, it is okay." Do you recall that he handed you a check for \$1850?

A. Yes, I believe so.

Q. Well, do you remember it?

A. Yes.

Q. When was that? Was that in the morning?

A: That I don't remember.

Q. When you got the check in your hand did you have a car to go to the Sunset Automotive in?

A. I probably had my own car.

Q. Did you take your own car over there!

A. Yes, I think so.

Q. Did you drive the Cadillac away when you paid for it!

A. Well, I didn't pay for it that time. I left the check.

Q. When did you get the Cadillac then?

A. It was probably still home in the garage.

Q. You left the Cadillac at home?

A. I think so. It could have been at home. It could have [fol. 1749] been taken back down to the shop. I don't remember that.

Q. Who would have taken it down there, if it was taken

down

A. It could have been my father drove down.

Q. I realize that before I asked the question, it could have been. You were there, I wasn't, and we are all interested in some of these little points. There is nothing wrong with your telling us.

A. If I knew I would tell you. I have nothing at all to

hold back.

Q. There is nothing at all to implicate you or your dad.

A. I don't see how it could.

Q. We do want to know about the transaction and you are remembering more as time goes on, so keep it up. You took the check and went down in your own automobile. What kind of a car is that?

A. I believe I had a '47 Cadillac at that time.

Q. '47 Cadillac. Was that your dad's or yours!

A. My car.

Q. Where did you park when you went down there? Did you park on the Sunset Automotive lot or—

A. I usually park on the lot or alongside the building.

Q. I don't care where you usually park. Do you remember where you parked this morning?

A. I don't even know it was in the morning.

Q. Could it have been in the afternoon?

A. It could have been in the afternoon. It could have been the evening.

Q. Was anyone there when you arrived?

A. I am trying to remember. I am pretty sure there [fol. 1750] wasn't anybody there so it must have been evening.

Q. Was the office open?

A. I had a key to it.

Q. Did you go into the office?

- A. I must have if I put it in—if I put it in that desk drawer.
 - Q. Well, you remember putting it in the desk drawer?

A. I am quite sure.

- Q. Do you remember unlocking the office and putting it in there?
- A. I don't believe the office is locked. There wasn't any door on the office at that time.
- Q. Oh, the desk is in there and it is just a open door and you walk in.

A. Yes.

Q. Where does the key fit that you had?

A. That is the key to the garage, the main door of the garage.

Q. Where they repair the automobiles?

A. Yes.

Q. You went in the little office. And did you find a envelope there?

A. It was put in the envelope before I took it down.

Q. Who put it in the envelope?

A. It must have been my father.

Q. You don't recall?

A. No.

Q. You remember seeing the check?

A. No, I didn't see the check, but I was told there was a check in there for that amount, I believe.

[fol. 1751] Q. Did you tell your dad how to make the check out, to whom the check should be made out?

A. I don't think I'did.

Q. Did he ask?

A. He must have found out through some other way, because I don't remember him asking me.

Q. You knew the car belonged to Dave Beck, Jr. ?

A. I don't know.

Q. It was his car as far as you knew?

A. No, it wasn't his car.

Q. It wasn't his car?

A. It is—he drove another Cadillac. I think you know what that is, I think you know he had another Cadillac.

Q. He was driving another Cadillac.

A. He has his own.

Q. Who belonged to this carf

A. I heard it was Dave Beck, Sr.'s car.

Q. But Dave Beck, Jr. brought it in there two or three times?

A. He drove in and left it and picked up his other car.

Q. When he did that what did they do to the car they drove in to pick up? What did he do when he drove this car your dad bought, just leave it there or drive it in for some reason.

A. I don't know that.

Q. Now, you never saw the check that your dad had executed for this car?

A. No.

Q. This envelope that had Dave Beck, Jr. written on it, on the outside of it, where the check was, was that written [fol. 1752] on there before you went down there or after?

A. I believe it was written on there before.

Q. It was written on there by your dad probably, or the bank?

A. Probably by my dad.

Q. Was it in your dad's handwriting, do you recall?

A. I don't recall that.

Q. But you recall taking the envelope down there with Dave Beck, Jr. written on the outside and putting it into the drawer?

A. Yes.

Q. Do you recall that?

A. Yes.

Q. Is that distinct in your mind? Is that clear in your mind that is what you did?

A. Would you repeat that exactly.

Q. That you took the envelope from your dad that had Dave Beck, Jr. on the outside; took it down there in your '47 Cadillac; put it in the drawer of the desk, or whatever the thing is there that was open. Is that what you did?

A. I believe so.

Q. You didn't see your dad write on the outside of the envelope in your presence?

A. I don't know. No, he probably did it on his desk or something.

Q. He has a desk at home?

A. Yes.

Q. You told us first, Jack,—and I am not trying to confuse you, I am trying to find out if I can—that you didn't write anything on the envelope and there was no writing on the outside of the envelope, is my recollection. Ap[fol. 1753] parently you said you didn't.

A. I didn't write.

Q. Was the writing on the outside Dave Beck, Jr.

A. I didn't deny that.

Q. My recollection must be mistaken. You didn't write that on the outside of the envelope?

A. Right.

Q. The check was in an envelope when you took it down.

A. Yes.

Q. It was your understanding then you were paying for the car and they were going to send the papers to you?

A. Yes.

Q. But you didn't contact Dave Beck and talk to him about it.

A. Dave Beck!

Q. Jr.

A. Jr., no.

Q. You'didn't talk to Ken Eline about it.

A. I asked him about his mechanical opinion.

Q. You asked his opinion as a mechanic. You didn't ask about the transaction or tell him about the check or ask about the title papers or anything of that nature, is that right?

A. I don't remember that.

Q. I can't hear you.

A. I don't remember that.

Q. You could have!

A. I could have.

Q. But you didn't ask Dave Beck, Jr. about that.

A. No.

[fol. 1754] Q. You are sure of that? You are positive about that?

A. Yes.

Q. And you could have asked Kenneth Eline about it?

A. There is that possibility, yes.

Q. Could you have asked anyone else about it? Anyone else down there with any authority to arrange for the transaction at all or give you any instructions on it?

A. Somebody could have heard about it, I mean, things

go through a shop like that.

Q. I mean in the dealing on this automobile and paying \$1850 of your dad's money you made arrangements with somebody.

A. I must have.

Q. You might have made them with Kenneth Eline, you did not make them with Dave Beck, Jr. Is there anyone else you could have made them with?

A. It brings it down to Kenneth Eline, doesn't it!

Q. It ends up there, yes, and it doesn't implicate him at all. It is not going to hurt him a little bit, even. We are merely trying to find out.

A. That must have been, but I don't remember the specific

time that I did.

Q. The specific time or words!

A. I don't remember that I did for sure, but that is what it seems like it must have been.

Q. It sure does to me too. It wasn't Dave Beck, Jr. and it wasn't anyone else. Is that correct. It wasn't anyone other than Ken Eline?

A. I don't think it could have been anybody else.

Q. There is no one down there that could have made arrangements like that, is there?

[fol. 1755] A. No.

Mr. Regal: That is all. Do any of the jurors have any questions?

By Mr. Hanness:

Q. There was no question of any commission or anything like that that was involved for selling this darm thing. What about that?

A. So far as I know there was no commission received in

selling the car.

Mr. Regal: What did you say?

The Witness: So far as I know no commission was re-

By Mr. Devin:

Q. Would you care to explain why there is all this mystery around this sale, Jack. Why you put a check in an envelope and go down and place it in a drawer and somebody else takes it out and you don't know who you are buying it from and all of that. Have you any explanation to make for that?

A. I don't understand what you mean by mystery.

Q. Isn't that mysterious to put a check down in a drawer and say nothing about it and somebody comes along and takes it out of the drawer and gives it to somebody else! Did you ever buy a car before!

A. No.

Q. Did you ever see a car bought before?

A. Yes.

Q. Did this seem to be an unusual way to buy a car to you?

A. Not under the circumstances, no.

Q. What were the circumstances.

[fol. 1756] A. It was purchased and there was nobody there to—at that time, if somebody would have been there at the time I brought the check, I would have given it probably to somebody.

Q. Nobody was there.

A. No.

Q. Well, did you know who you were buying it from?

A. Yes.

Q. Who.

A. I knew who the check was to be made out to.

Q. You said you knew who you were buying it from. Who were you buying it from?

A. I believe the car belonged to the Teamsters, didn't it?

Mr. Devin: That is all.

(Witness excused.)

[fol. 1757]

CERTIFICATE

State of Washington, County of King, ss.:

I, Louise Sartor, one of the official court reporters of the State of Washington in and for the County of King, do hereby certify that I am the official court reporter assigned to the King County Grand Jury convened in May, 1957;

That I was present before the Grand Jury and reported the testimony of Jack Stratton given before said Grand Jury under oath on the 19th day of June, 1957;

That the above and foregoing is a full, true and correct transcription of said notes taken in the above entitled cause and personally transcribed and typed by me;

That the foregoing transcript of testimony is being furnished to the defendant pursuant to Order Granting Defendant Permission to Transcribe Certain Portions of Grand Jury Testimony, signed by the Honorable Lloyd Shorett, on the 30th day of April, 1958.

Louise Sartor, Official Court Reporter.

[fol.,1758]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

No. 104594

IN THE MATTER OF THE KING COUNTY GRAND JURY

Testimony of Fred Verschueren, Jr. Taken June 20, 1957

Be It Remembered that on the 20th day of June, 1957 Fred Verschueren, Jr. was called as a witness before the King County Grand Jury, and pursuant to permission granted by the Supreme Court of the State of Washington, and by Order Granting Defendant Permission to Transcribe Certain Portions of Grand Jury Testimony, dated the 30th day of April, 1958, the following transcript of his said testimony is furnished.

FRED VERSCHUEREN, JR. called as a witness, being first duly aworn on oath, testified as follows:

Direct examination.

By Mr. Devin:

- Q. Would you state your name?
- A. Fred Verschueren, Jr.
- Q. Where do you live!
- A. 611 16th North, Seattle.

[fol. 1759] Q. What is your occupation?

- A. I am bookkeeper for the Joint Council of Teamsters.
- Q. Are you an officer of that organization?
- A. Well, that is, I am not actually certain. I am cosigner on the checks, but only in a—well, an accounting position until another officer is elected or appointed.

Q. What are the officers of the Joint Council of Team-

sters No. 28. There is a president?

A. There is president, secretary-treasurer, and I believe there are trustees.

Q. How many trustees?

A. Of that I am not certain.

Q. Who was the president of the Joint Council No. 28!

A. Mr. Frank W. Brewster.

Q. Are you acting secretary-treasurer at this time!

A. Well, as I spoke with Mr. Lawrence before, so far as I know, yes. I am co-signer on the checks. I will just have to put it that way.

Q. Have you been authorized to co-sign the checks?

A. Yes.

Q. With whom are you a co-signer on the checks?

A. Mr. Frank W. Brewster.

Q. Must all checks of Joint Council No. 28 then be signed by you and Mr. Brewster at this time?

A. Yes.

Q. Ordinarily they would be signed by the president and by the secretary-treasurer?

A. That is correct.

Q. Is that right?

A. Yes.

[fol. 1760] Q. So your signing them more or less makes you the acting secretary-treasurer by virtue of that authority. I am just trying to identify it.

A. Well, yes, as I say-

Q. You don't know what legal authority you have, as I understand it, but you are signing the checks and you are authorized to sign the checks.

A. Yes.

Q. How long have you occupied this position, Mr. Verschueren?

A. Well, since the death of Mr. Sweeney. I am not certain as to the date. I just couldn't definitely state.

Q. Could you tell us approximately when Mr. Sweeney died, what year?

A. Oh, it was last year.

Q. Last year, 19561

A. Yes.

Q. Was it the first part of the year or the latter part of the year?

A. Sort of the central part, I believe. I really don't-

Q. You are familiar with the books of the company, are you not?

A. Yes sir.

Q. How long have you been bookkeeper of Joint Council

A. Since 19—as far as Joint Council 28 itself is concerned since 1955, January of 1955, I believe it was.

Q. What were you doing before that?

A. I was working for the Joint Council as a bookkeeper for the various locals within the organization.

Q. Would you explain to the jury please just how Joint

Council 28 is made up?

[fol. 1761] A. Well, it is made up of the various locals within the State of Washington, with one local in the State of Idaho and they comprise the Joint Council of Teamsters No. 28. It is made up of the various locals within the State of Washington and in this area.

Q. Is there one Joint Council in each state or more or

less †

A. There can be more.

Q. But there is at least one, is there?

A. Yes.

Q. And there is one in the State of Washington?

A. Yes.

Q. And the Joint Council in the State of Washington is made up of all of the teamster locals in the State of Washington?

A. Yes sir, with one local from outside the state, Coeur

d'Alene, I believe.

Q. Do I understand that membership of the Joint Council of Teamsters is made up of other locals rather than of individuals, is that correct?

A. Yes sir, other locals and representatives thereof.

Q. So it doesn't have an individual membership, it is made up of representatives of other teamster locals?

A. Yes sir.

Q. How many representatives does each local have on the Joint Council?

A. Well-

Q. Does that vary?

A. It does vary according to size, yes.

Q. According to size of the local?

A. According to the membership of the individual local. [fol. 1762] Q. Is it determined, is that representation determined then by the size of the membership of the local?

A. Yes, most generally.

Q. Some locals then would have more representatives on the Joint Council than others?

A. To the best of my knowledge, yes.

Q. Is that correct?

A. Yes.

Q. Does the Joint Council have regular meetings?

A. Yes.

Q. How often are they held?

A. Well, once a week, generally, with some exceptions. I believe they are suspended during the summer months.

Q. Is that regular meeting then attended by, or is it supposed to be attended by, all of the members of the Joint Council?

A. All the representatives, yes, of the various locals within the Joint Council. Yes, they are all invited.

Q. Do you know how many locals there are in Joint

Council 28!

A. Off-hand, no sir. I could estimate.

Q. Just estimate it roughly?

A. Well, thirty-five-no, forty to forty-five, I would say.

Q. These are scattered all over the State of Washington, I presume.

A. Yes.

Q. So the representatives from these various local teamster unions attend these regular weekly meetings of the Joint Council 28, do they?

[fol. 1763] A. There is generally quite a good representa-

tion, yes.

Q. Are those meetings always held at the same location! Are they held in Seattle or held in other parts of the state!

A. No, they are held in Seattle.

Q. Is this the headquarters of Joint Council 28?

A. Yes.

Q. How many people are employed by the Joint Council!

A. I would have to estimate that also.

Q. Could you estimate it?

A. Ten to fifteen.

Q. They are employed in the Seattle office here?

A. They are employed out of the Seattle office, yes sir.

Q. What are your duties as bookkeeper and as acting secretary-treasurer, if that is what you are. What are your present duties for the Joint Council?

A. They have changed none since I became acting secretary-treasurer, other than the fact, as I say, I am co-signer on the checks. I still am merely keeping books for the Joint

Council of Teamsters.

Q. What are your duties as bookkeeper than?

A. Well, to-

Q. Keep the books?

A. Yes, keep the books.

Q. You keep all the records of the Joint Council. You are in charge of all the records?

A. All of it, yes. The books, yes sir.

Q. Is there anyone else in charge of any of the records of the Joint Council?

A. Not of the Joint Council proper, no sir. I mean, you [fol. 1764] may be referring to the building association, but that is another—

Q. No, I wasn't. I was referring to Joint Council 28.

A. Yes.

Q. Does the Joint Council 28 own any property?

A. No.

Q. Does it own the title to any automobiles?

A. Yes.

Q. When you said no property you meant no real property?

A. Yes sir, that is what I was referring to.

Q. But they do own-title to personal property, is that right?

A. Oh yes, yes.

Q. To automobiles.

A. Yes, automobiles, office equipment.

Q. Do they have a bank account?

A. Oh yes, yes.

Q. Office furniture and fixtures?

A. Oh yes.

Q. What other personal property do they have? Do they have any investments?

A. There are some loans from the Joint Council, I be-

lieve.

Q. Loans from the Joint Council?

A. Yes.

Q. Has the Joint Council borrowed money? Does it berrow money?

A. Yes, it has in the past.

Q. Does it owe any money now, outside of current expenses?

A. To my recollection, no sir.

Q. How is this personal property carried on the books

of the company?

[fol. 1765] A. Well, it is carried just as a direct expenditure. It has never been capitalized and depreciated. Being a tax exempt organization there is no advantage to depreciating real property. It would only amount to added bookkeeping and would net us nothing as far as—I mean, it would be an added expense to us to capitalize and depreciate it, because of the time involved.

Q. How are the automobiles carried on the books of the

company !

A. They have always been treated in that same fashion.

Q. Under what heading? What classification are they carried under?

A. As an automobile expense.

Q. Automobile expense?

A. Yes.

Q. How is the furniture carried?

A. As an office equipment expense.

Q. So if the Joint Council buys an automobile it is entered on the books of the company as an automobile expense, is that right?

A. Yes sir.

Q. Let's assume that they pay \$4,000 for an automobile. a new automobile. Then that is entered on the books as an automobile expense, \$4,000?

A. Yes sir.

Q. That is written off then?

A. Yes sir.

Q. What happens if that automobile is turned in on another car?

A. Well, if there is a balance owing over and above that, [fol. 1766] a check is issued and it reflects right into automobile expense again.

Q. Suppose that automobile is given to someone as a gift,

what entry is made on the books?

A. Well, there would be no book entry made at that time. It would show on the title, that would be the only—

Q. Is there a permanent record kept of the title to cars?

A. No sir, there never has been.

Q. It is only the certificate of title?

A. That is correct.

Q. Do you have that in your possession, the title to all of the cars that are owned by the Joint Council?

A. I am turning those over to-

Q. To the Grand Jury!

A. To the Grand Jury. In fact, I had them down all day yesterday and didn't get the opportunity to get downstairs to turn them over to Mr. Marx.

Q. Ordinarily those titles are in your possession?

A. Yes sir.

Q. You keep those actual physical certificates?

A. Yes sir.

Q. When a car is transferred who is authorized to sign the transfer of that title?

A. Well, it would be officials of the Joint Council.

Q. Meaning who?

A. Either the Secretary-Treasurer or the President.

Q. They are the only two that would be authorized to

A. Of that, sir, I am not certain now. I would not make

a definite statement on that.

Q. Have you ever signed a title to a car? [fol. 1767] A. I may have, sir.

Q. In what capacity?

A. I wouldn't definitely say that either.

Q. Do you know how many you have signed?

A. No, I do not.

Q. Has it been more than one?

A. I would not definitely say one way or the other. I really do not recall.

Q. Is there any record kept of the cars which are pur-

chased by the Joint Council and later disposed of?

A. No sir, there never has been. I mean, there wasn't prior to my taking over the books and I did not—I just followed along in line, the same system that they had been handling it.

Q. So there is no way of tracing a car that is purchased by the Joint Council as to what happened to it, is that

correct?

A. Well, the title would certainly show that, sir.

Q. Suppose one of the locals of Joint Council 28, the representatives came to you and said, "I would like to know how many cars the Joint Council has bought in the last year." Would you open your books and show them. You would say we bought this many cars?

A. Yes sir, that could be determined by the entries in the cash book. You could go down there and naturally a check drawn to an automobile concern for a considerable amount

would be for the purchase of an automobile.

Q. Wouldn't it also be on your books, entered as an auto-

mobile expense?

- A. That entry would be in the automobile expense, yes. [fol. 1768] Q. Every car you bought would be on there, wouldn't it?
 - A. Yes.
 - Q. And the amount you paid for it?
 - A. Yes.
- Q. Then if he should say, "How many cars do you have in your possession at the present time?" How would you determine that?

A. By the number of titles I was holding.

- Q. You would go where you have the titles kept and take those out and count them over?
 - A. Yes.

Q. For illustration, we will say you had purchased fifteen cars in the last year and you had only ten titles, how would you account to the representative for the other five cars!

A. Well, if they were sold, which would presumably be the situation, there would be a book entry as far as the cash book was concerned showing the sale of the car. Q. You have no way of knowing whether they were sold, would you, from the books or any other way, for that matter.

A. Well, yes, from the books. The entry in the books would show that this certain amount was received for the sale of that automobile.

Q. Suppose it never reached there. Suppose, for instance, that car was traded in on another car and you showed that other car for a lesser price than a new price because you had a trade-in value?

A. That would not be reflected. That would not reflect in

the books.

[fol-1769] Q. You wouldn't know what happened to that car.

A. From the books you would not, no.

Q. Would you know from any other way?

A. From memory only.

Q. Suppose Mr. Brewster was a friend of someone and he wanted to convey one of those cars to that friend and he came to you and asked you to give him the title to that car, would you give it to him?

A. Well, yes.

Q. Could he sign the title of that car away from the Joint Council and give it to that friend?

A. To the best of my knowledge yes, he could.

Q. Would your books reflect any receipt of that money if he didn't give it to you?

A. Well, if he didn't give me the money, no, the books

would not reflect any receipt of it.

Q. Then the books would not reflect to whom that car was sold, either, or was transferred?

A. No. As I say, only going to the title and determining from that.

Q. Suppose Mr. Brewster came to you by the same process I just related and asked you for the title to a car and actually sold the car to another party and received a check for it for \$1800 and gave you that check. Would that show in the books?

A. Yes sir.

Q. Where would that show?

A. That would show on the receipts in the books. There would be a notation opposite, or should be. I have no way of knowing what notations were made or how the books [fol. 1770] were handled before I took them over, but if I received the check there would be a notation there as to its origin and the reason for it.

Q. Would that notation be under the car account or some

other place?

A. It would be under miscellaneous receipts.

Q. Would it show what it was for?

A. Yes.

Q. How would that entry be made?

- A. Sale of such and such a car to so and so; words to that effect.
 - Q. You would put the purchaser?

A. Generally, yes.

Q. Who it was sold to?

A. Yes, if I was making the entry.

Q. What would you do if you knew that Mr. Brewster had taken a car like I have related, taken the title to the car and sold it and not given you the money for it. Would you have reported that to anyone?

A. Well, how would I know that he had done that, sir!

Q. Well, when you gave him the title to the car would you make any inquiry of him what he was going to do with it?

A. Well, as my employer, no I would not.

Q. Well, suppose Dave Beck, Jr. asked you for the title to a car. Would you ask him what he was going to do with it?

A. Yes, I may ask him.

Q. If he said he was going to sell it, what would you say and what would you do?

A. Well, that is a hypothetical question.

[fol. 1771] Q. Would you report it to anyone?

A. Oh yes, definitely.

Q. Whom would you report to?

A. Well, my superiors.

Q. Who is your superior?

A. Well, Frank Brewster. It depends now when this took place, I mean, as to who my superiors were, with the Secre-

tary-Treasurer and the President of the Joint Council. I mean, there have been many.

Q. Your own superior is the President or the Secretary-

Treasurer ?

A. And its Trustees.

Q. How many Trustees are there!

A. That I am not certain of.

Q. Do you know who they are!

A. Not definitely, no sir.

Q. You would have a hard time reporting to them, wouldn't you, if you didn't know who they were?

A. Yes, that is true.

Q. Have you ever reported a case of that kind to your superiors?

A. I don't recall now.

Q. Now, Mr. Verschueren, I want to hand you Exhibit 15, which are photostatic copies of license certificates and so forth. I will ask you if you can identify whether that is Mr. Brewster's signature?

A. It looks like his signature, yes.

Q. Do you recognize what that is?

A. It is a registration for—what do you mean, what it is?

Q. What is the instrument?
A. It is a motor vehicle title.

[fol. 1772] Q. Title to what kind of a carf

A. A 1951 Cadillac.

Q. In whose name is the title?

A. Joint Council of Teamsters No. 28.

Q. Is the signature on the back of that that of Mr. Brewster? Does it appear to be?

A. It does, yes.

Q. Is there any date there?

A. January 4, 1955.

- Q. Were you acting Secretary-Treasurer at that time? A. No sir, I believe John Sweeny was alive at that time.
- Q. Do you know whether the books of the Joint Council reflect this sale in any way?

A. Without going to the books, no sir, I couldn't say.

Q. Could you tell by looking at the books? A. Well, if given time, yes sir, I could.

Q. Could you tell by examining the books whether \$1850 which appears to be the purchase price for that car ever

found its way into the treasury of the Joint Council of Teamsters? Could you tell by looking at the books?

A. I believe I could, yes sir.

- Q. Was Dave Beck ever Vice-President of the Joint Council?
 - A. Vice-President?
- Q. Yes. Was he Vice-President the 25th of January, 1951?
- A. Not to my knowledge. I mean now I really couldn't say.
 - Q. Were you working for the Joint Council in '51!

A. Yes, but you say Vice-President?

Q. Was he any officer?

A. I believe he was President.

Q. Do you know whether that is Dave Beck's signature there?

[fol. 1773] A. It—no, I wouldn't say that was.

Q. You wouldn't say it was.

A. No sir.

Q. Do you know Dave Beck, Jr.'s signature?

A. No, not to any great extent, but I wouldn't say it was.

Q. I don't think it is either.

A. I wouldn't say it wasn't, but I wouldn't say it was, either.

Q. To your knowledge there was no such office as Vice-

President of Joint Council of Teamsters.

A. There is an office, yes. I believe now that you bring it up there is an office, but Dave Beck was never—well, he may have been at one time. I couldn't say, but in the last few years or the last ten years he wasn't.

Q. How long did you say you had been bookkeeper for

Joint Council No. 28, Mr. Verschueren?

A. Since January, 1955, I believe.

Q. To your knowledge has the Joint Council of Team-sters ever given away any cars as a gift?

A. Not to my knowledge.

Q. Who was the bookkeeper prior to the time that you took over?

A. Mrs. Peggy Agapoth.

Q. Do you know where she is at the present time?

A. Well, the last I heard she was in Japan. She married a Chief in the Navy.

Q. Do these books which are here—and are these the books which you delivered in compliance with the subpoena?

A. They look as though they are, yes.

[fol. 1774] Q. If they are the ones that you delivered, Mr. Verschueren, do they contain an accurate record of all the receipts and disbursements from January 1954 until the present time?

A. Yes sir.

- Q. Could you tell by looking at those books whether or not any amounts of money had been paid or defivered to the Joint Council during that time, from 1954?
 - A. Paid to the Joint Council you say, sir?
 - Q. Yes.
 - A. Yes.
- Q. Would you then please take these books down to the Grand Jury room and examine them to determine whether or not there was paid to the Joint Council between January 1954 and the present date, \$1850, or any similar amount, for the sale of this 1951 Cadillac car. Could you determine that from the records?

A. Yes sir.

Q. Whether or not it is there. And also would you please show us, as you are going through the books, make a notation of any place in the books that shows the receipt of any money for the sale of any cars during that period. Would you do that from this?

A. Yes.

By Mr. Lawrence:

Q. I wonder if we could ask also, Mr. Devin, if he would show and if he would make a note and show us any item of receipt of \$1850 whatever it might be that is on the books, in that amount of money. Would you do that?

A. Yes.

[fol. 1775] By Mr. Regal:

- Q. Mr. Verschueren, you said that Joint Council 28 owns automobiles?
 - A. Yes.
 - Q. How many cars do they have now?

- A. Well, I think it is five, but I am not definite.
- Q. Does it fluctuate?

A. Oh, yes, some. I believe they own five now.

- Q. You have been a member of the Joint Council of Teamsters for how long?
 - A. A member ?
 - Q. An employee, rather.
 - A. April 15, 1947.
 - Q. April 15, 1947.
 - A. Yes sir.
 - Q. What was your job at that time?
- A. I was employed by the Joint Council of Teamsters as a bookkeeper for various locals housed in the same building.

Q. Were there a great number of locals?

- A. Yes.
- Q. More than ten?
- A. Yes, I believe so.
- Q. Did you keep separate books for each local?
- A. Yes.
- Q. It was quite a stack of books that you kept.
- A. Yes.
- Q. Those books would indicate the receipt of money from union dues?
 - A. Yes.
- Q. And the disbursement of monies for various things [fol. 1776] they had to buy and maintain the operation!
 - A. Yes.
- Q. Did you have anything to do at all with the books of the Joint Council before January of—
 - A. No. Excuse me.
- Q. When did you start as a bookkeeper for Joint Council 28. What month of '55?
- A. I believe to the best of my recollection, it was January of 1955. The books will also reflect that too
- Q. You can look at the books and see by the handwriting when you started?
 - A. Yes sir.
 - Q. The very day in fact?
 - A. Definitely yes.

Q. When you started keeping the books was Mrs. Agapoth there for a period of time while you were taking over her books?

A. A very short time, approximately a week. It was

quite a sudden move that she made.

Q. She was going to leave and go with her husband and you were advanced to that job?

A. Yes.

Q. When you took over the books then you started making all of the entries in the books?

A. Yes.

Q. You testified to Mr. Devin's question that from January of '54 to the present time these books contain all of the receipts and all of the disbursements.

A. Yes.

[fol. 1777] Q. That is sort of a categorical question and you categorically answered it.

A. I see. All right, no. He had a different year.

Q. Mrs. Agapoth might have missed a few.

A. I have no way of determining.

Q. As far as you know what the practice is they should contain all of the receipts and all of the disbursements?

A. Yes sir.

Q. Furthermore, from what you have heard from her and what she told you concerning the conduct and keeping of these books they do contain all of the receipts and all of the disbursements.

A. Yes sir.

Q. Do these various locals own cars too?

A. Yes.

Q. Do they purchase them in the same way, and classify them as an expense?

A. Yes.

Q. Then when they were sold they handled it in the same manner?

A. Yes sir.

Q. Who are some of the Trustees of the Joint Council?

Just name as many as you can remember?

A. Well, now I am not absolutely certain-

Q. As well as you know.

A. All right. B. I. Bowen.

Q. Where does he reside, what city?

A. Here.

Q. Seattle. Who else? Are they all in Seattle?

A. No, they are not.

[fol. 1778] Q. This one is in Seattle. Who else?

A. In fact, I won't be able to give you the out-of-town ones. Eric Ratcliffe. There are two from out-of-town, but I wouldn't want to state a name because I not absolutely certain.

Q. Give us what you think they are. If you are wrong it is not going to hurt anyone. It won't hurt anyone any way.

A. Charlie Jewell.

Q. Where does he reside?

A. Wenatchee.

Q. Who else?

A. Well, I can't even think of—I can't think of the other one's name. It is Everett.

Q. A man in Everett.

A. Yes. I know it as well, I can't think of it.

Q. If you think of it while you are looking over the books and waiting to come back, will you let us know when you come back?

A. Uh huh.

Q. Now, Exhibit 15, just one question clarified here. With reference to one of these documents Mr. Devin showed you, he showed you the document and asked you whether or not it appeared to be Mr. Brewster's signature.

A. It appears to be.

Q. Do you know Mr. Brewster's signature when you see it?

A. Yes.

Q. You do know it?

A. Yes.

Q. You have seen it many, many times?

A. Yes.

[fol. 1779] Q. Hundreds of times almost?

A. At least, yes.

Q. Now, looking at the signature again, which is the back apparently of a picture of the certificate of title to the motor vehicle, and it shows a 1951 Cadillac, License A-243-198 and behind that—you check that, A-243-198—behind that shows a signature of Mr. Brewster?

A. Yes.

- Q. That is his name. Is that his signature on lines one and two?
 - A. It appears to be his signature.

Q. It appears to be his signature.

A. It appears to be his signature, yes.

Mr. Regal: That is all.

By Mr. Lawrence:

- Q. Mr. Verschueren, your father is Fred Verschueren, Sr.
 - A. Yes sir.
 - Q. Where is he now?
 - A. He is in Seattle, sir.
 - Q. Whereabouts in Seattle?
 - A. Well, I believe he just came home from the hospital.
 - Q. How recently did he come home from the hospital?
- A. Well, the early part of this week, I believe it was. I don't rightfully recall.
 - Q. Monday or Tuesday of this week?

A. Yes.

- Q. Where does he live?
- A. 5211/2 17th Avenue North.
- Q. Who is his doctor?
- A. Dr. Alex Grinstein.
- [fol. 1780] Q. To the best of your knowledge what is your father's ailment?
 - A. Well, cellulitis. It is a circulatory ailment.

Q. Is he up and about the house now?

- A. He is moving around. His legs are still swollen.
- Q. Does he get dressed during the day?

A. I believe so.

- Q. What office does your father hold, if any, with the Teamsters Union or any affiliated union?
 - A. What offices!

Q. Yes.

- A. Well, he is the Auditor for the eleven western states under the International Brotherhood.
- Q. Is he employed by the International Brotherhood or the Western Conference?
 - A. Yes, the International.

- Q. He is Auditor for the International assigned to the eleven western states.
 - A. Yes.
- Q. Does he have any employment at the Western Conference?
 - A. No sir.
 - Q. Or Joint Council No. 281
 - A. No sir.
 - Q. With any local?
 - A. No sir.
- Q. As Auditor for the International does he have authority to examine and audit the books of the various locals?
 - A. No, he does not.
 - Q. What are his duties then, as Auditor?
- A. Well, he has not the authority in his own right with-[fol. 1781] out being directed to do so, let me put it that way.
 - Q. Who would direct him?
 - A. The International.
 - Q. What type of direction would he receive?
- A. Well, that is something you would have to check with him on that.
- Q. Would he get an assignment to go out and audit Local 121 or some such thing?
 - A. Yes.
- Q. Would he get an assignment to audit the Western Conference for instance?
- A. Yes, he—if he were assigned to do so, it would come out of the International office.
- Q. As I understand it, he doesn't have a continuing job as Auditor, but simply audits upon specific assignment?
 - A. He has a continuing job as Auditor, yes.
- Q. A specific assignment consumes his own time. He is not a free agent to determine when and what he will audit?
- A. To an extent, yes, he is a free agent to determine what he does, but he does need the assignment out of the International, I mean.
- Q. Will he get a blanket assignment, like auditing a local you feel needs auditing?
 - A. I don't follow you.

Q. You say he is more or less a free agent. Is that because he has a general assignment or authority to audit any local that he feels needs auditing or hasn't been audited for a while?

A. Yes and no, but as I say that direction must come

from the International,

[fol. 1782] Q. Do you think your father is physically able to come to court here and testify before the Grand Jury?

A. I have no way of determining that, sir.

Q. I would like to ask you a question about the sale of this 1951 Cadillac. Do you recall this transaction at all?

A. No sir.

Q. Where a 1951 Cadillac was sold to a Mr. Stratton?

A. No sir.

Q. Do you know anything of it?

A. Not a thing, sir.

Q. Do you recall anything?

A. I do not recall ever seeing the title, in fact.

Q. Do you recall any problem in connection with the sale that took a matter of some time before the title could be straightened out to pass to the purchaser?

A. I do not.

Q. You have no knowledge at all of this transaction?

A. I have no recollection of it.

By Mr. Devin:

Q: Mr. Verschueren, could you state whether or not you know what happened to all of the cars of the Joint Council 28 since you have been acting Secretary-Treasurer in 1955? Or, let's say since you have been bookkeeper?

A. No, I could not.

Q. You couldn't say?

A. No.

By Mr. Lawrence:

Q. Will you take these books down and then will you advise Mr. Marx when you are ready to answer.

A. All right.

[fol. 1783] (Witness excused to examine books.)

(Witness recalled in the afternoon session after examining books and records.)

By Mr. Devin:

Q. Mr. Verschueren, you were asked this morning to examine the books of the Joint Council No. 28 with a view to determining, if you could, if there was any notation in the books showing the purchase of an automobile between January 1954, and the present date. The sale of an automobile of Joint Council No. 28 for \$1850. Did you examine the books?

A. I did, sir.

Q. Did you find any record of that sale?

A. No, not in the records I examined, no sir.

Q. Did you find in the records you examined a record of any sale of a car during that period?

A. No sir.

Q. Did you find in the records an entry of any amount approximating \$1850 as a receipt to the Joint Council?

A. No sir.

Q. In your opinion, Mr. Verschueren, were the records you examined the complete and total records of the Joint Council 28?

A. Yes sir, for that particular time.

Q. There were no other records in which such a transaction might have been entered, is that correct, that you

know of during that period?

A. Well, I can't definitely say that, no sir. It could have been channeled into another fund. I couldn't really say. [fol. 1784] Q. Well, if it had been channeled into another fund would it have been entered on the books which you looked at?

A: Not necessarily, no.

Q. What other books are there?

A. I mean, there is a possibility it might have gone into

the Western Conference. I couldn't say that.

Q. Is it possible that any transaction of the Western Conference could have gone into the Joint Council books!

A. Yes sir. Well, now, I can't say that. I didn't examine for that.

Q. How could it have gotten on the Western Conference books if it was a car of the Joint Council?

A. I couldn't determine that, but I am just saying there is that possibility.

Q. Have you ever known of an instance where that hap-

pened?

A. I have known a title to read improperly, yes sir, whereas it should have been a Joint Council car or vice versa and it was registered improperly. It has occurred in the past, yes.

Q. In other words, you have known of instances where property which rightfully belonged to the Joint Council was

registered in the name of the Western Conference?

A. Yes sir, through error.

Q. Through error?

A. Yes sir.

Q. But do you know of any instance where property belonging to the Joint Council and registered in the name of the Joint Council was ever sold and the money for the sale of that ended up in the Western Conference?

[fol. 1785] A. Not for a fact, no sir.

Q. Where are the offices of the Joint Council, Mr. Ver-

schueren 1.

A. Where are they?

Q. Yes. Where are they located?

A. The offices are on 552 Denny Way, Seattle.

Q. That is the Teamsters headquarters?

A. Yes.

Q. Is Dave Beck's office in that same building?

A. Yes sir.

Q. Do you know Mrs. Guiry?

A. Yes.

Q. Do you know her to be Mr. Beck's secretary?

A. Yes sir.

Q. Do you know whether she handed Mr. Beck's—the affairs of the B & B Investment Company?

A. I can't-I couldn't swear to it, no. I mean, hearsay

only.

Q. Do you know whether or not she handled any of the

affairs for the Western Conference of Teamsters?

A. She was employed by them for some period, but I don't know to what extent she handled any of the affairs. In a secretarial capacity only.

Q. Did she, to your knowledge, handle any affairs for

Joint Council 281

A. Not to my knowledge.

Q. Do you know whether or not she would have the authority to direct the title to a car to be signed by an officer of the Western Conference of Teamsters?

A. Do I know if she would have the authority?

[fol. 1786] Q. Yes.

A. Well, I wouldn't know. I do not know or wouldn't know.

Q. Do you know whether she had the authority to direct the signing off of the title to a car owned by the Joint Council?

A. No, I do not.

Q. Do you know she does not have that authority?

A. Well, she does certainly not now. I could not say in the past what the condition was.

Q. You stated, Mr. Verschueren, you knew or had heard of some authority she had. Would you state what that was.

A. Well, no I don't believe I stated she had any authority. I said she might have, I would have no knowledge or any way of knowing.

Q. You don't know of any authority she had for the

Western Conference?

A. Well, as I say, I don't know of any.

Q. Did she used to work for the Western Conference!

A. Yes.

Q. Do you know when she ceased working for them?

A. I wouldn't venture a date. It is some time ago.

By Mr. Regal:

Q. Mr. Verschueren, before lunch you told us four of the Trustees of the Joint Council. You didn't know the man's name in Everett. Did you think about that recently. Did it come to you all of a sudden?

A. Frankly, it slipped my mind entirely. I certainly can

obtain it, however.

Q. Will you obtain the names of all the others. Can you obtain the names of the officers and trustees of the Western [fol. 1787] Conference of Teamsters for us. That information is available, is it not?

A. I believe it is, yes.

Q. Where would it be if you got it. Is it on the records at the Teamsters Union?

A. I imagine it would be in the minutes themselves.

Q. Are the minutes available to you?

A. They will be available to you, I believe.

Q. They will be available to us now.

A. 1 believe so.

Q. They are in the minutes?

A. I believe they would be.

Q. Of your own knowledge you don't know who the officers of the Western Conference are other than Frank Brewster?

A. Other than Frank Brewster and myself as signing-

acting-

Q. Acting Secretary-Treasurer. You have no contact with the other officers. Who are the other officers, what are their positions, if you don't know their names?

A. I don't believe there are any other positions in the

Western Conference.

Q. Just President and Secretary-Treasurer.

A. I believe so.

Q. You don't have a sentinel-

A. No, it is set up—it is a Policy Committee of various members.

Q. As Secretary-Treasurer is it your job to make out the checks or sign the checks of the Policy Committee? Do they receive a salary?

A. No, they are unsalaried.

Q. Is it necessary for you to contact them in any way? [fol. 1788] A. They have regular meetings to set policy, yes.

Q. Have you ever had occasion to contact them at some

of your functions?

A. No.

Q. You don't know who they are?

A. I have never attended a Policy Committee meeting.

Q. You are not a member of the Policy Committee of any organization?

A. No.

By Mr. Hanness:

Q. May I interject one point regarding officers. This morning you mentioned that there was provision for a Vice-President, but you didn't know it had ever been filled. Does that apply to the Western Conference?

A. I don't know-that doesn't apply to the Western Con-

ference.

Q. Apparently then you were referring to the Joint Council?

A. That is right.

By Mr. Ostroth:

Q. I wonder if you were getting Western Conference and Joint Council confused here in these last questions.

A. I am employed by the Joint Council.

Q. You don't have anything directly to do with the Western Conference?

A. Only in an accounting capacity.

By Mr. Regal:

Q. Let me clarify this for the jury. Tell us your position with the Joint Council? It is bookkeeper?

A. That is right.

Q. Do you hold any other position with the Joint Council [fol. 1789] A. At the present time, since Mr. Sweeny's death, I am the acting Secretary-Treasurer.

Q. Who is the president of the Joint Council?

A. Frank Brewster.

Q. Who is the president of the Western Conference of Teamsters?

A. The same.

Q. Frank Brewster!

A. Yes.

Q. Who is the acting Secretary-Treasurer of the Western Conference of Teamsters?

A. I am.

Q. In other words, there is that connection?

A. Yes.

By Mr. Hanness:

Q. Could you enlarge a little on the Vice-President deal. If there is provision for it do you know whether it has ever been filled and if so, by who?

A. I believe it is filled. I will have to obtain that in-

formation.

Q. The impression has gotten around, in my mind at least, there is no vice-president and I am curious now to know that there is one.

A. Well, sir, I am not definitely certain as to the provisions myself as far as the by-laws are concerned. All I said was I believe there is an office of vice-president and I also believe it is filled.

Q. What would lead you to believe that!

A. Well, I don't know what would lead me to believe it other than—

Q. (Interposing) There is no reason to believe there [fol. 1790] was one unless you had some foundation for it.

A. Well-

Q. Wouldn't it occur to you there was an organization without a vice-president if you didn't know there was one?

A. Pardon!

Q. Wouldn't it occur to you your organization didn't have a vice-president if there wasn't one?

A. Well, if you will allow me to do so, I will definitely ascertain that—who the officers are and what office is held.

By Mr. Devin:

Q. In order to clear this up, Mr. Verschueren, do you know if there is a constitution and by-laws of the Joint Council?

A. I have never seen it, but I believe there is one.

Q. If there is one would you be able to get a copy for us?

A. I believe I could.

Q. Did I understand now, when you were talking about vice-president, it was vice-president of the Joint Council, was it not?

A. Yes, vice-president of the Joint Council.

Q. I think that arose this morning Mr. Verschueren when I asked you to look at this signature of Dave Beck, V.P. which is signed Joint Council No. 28, isn't it?

A. Yes.

Q. Signed Dave Beck, V.P.

A. Well, now, all I said this morning, however, was that Mr. Beck had never been Vice-President, to my knowledge.

Q. But you said you thought there was an office of Vice-[fol. 1791] President.

A. Yes, that is correct.

By Mr. Regal:

- Q. I wanted to go into this a little bit more about the B & B Investment Company. Do you know of the existence of the B & B Investment Company?
 - A. Yes.
 - Q. Do you know what it is?
- Q. Do you know whether or not there is an office building with B & B Investment Company sign across the front of it?
 - A. I don't know, no.
- Q. Do you know of it as a bank account, personal bank account of Mr. Beck!
 - A. I know of it.
- Q. You know the B & B Investment Company. Tell us what it is?

A. Well, I don't know what it is, personally.

Q. What do you know of it then, if you know of it?

A. Well, I just know the account exists.

- Q. There is an account B & B Investment Company in a bank, is that correct?
 A. Yes.

 - Q. You know of that account?
 - A. Yes.
 - Q. Tell us how you know of it, of the account?
 - A. Well, I have just seen checks drawn on it and so on.
- Q. That have come through the Joint Council 28 or *Western Conference of Teamsters!

[fol. 1792] A. Some of them, yes.

- Q. When was that?
- A. Well, over a period of time.
- Q. What were the nature of the checks?

A. They were parking rental, mainly.

Q. Did they come through your books or your offices, these checks that you saw?

A. Some of them did.

Q. What was the reason they came through your office if they were the personal account of Mr. Beck.

Mr. Lawrence: Mr. Beck owns the parking lot, we know all about that.

Mr. Regal: These are preliminary if I may. Sometimes it takes a longer time to get to it, but this is preliminary.

Q. He owns a parking lot?

A. He owns parking areas.

Q. These checks came through your office. How were they made out?

A. They were made out to the B & B Investment Com-

pany.

Q. Had Mr. Beck talked to you about these checks before! That they might come through your office!

A. Possibly, I really couldn't say.

Q. Mr. Lawrence tells me that these checks that we are talking about, you and me, he knows more about it than we do, I am sure, and he is right, he has investigated this. He says these checks are made by the Joint Council or the Western Conference of Teamsters to Mr. Beck—

Mr. Lawrence: To B & B.

Q. To B & B Investment Company. [fol. 1793] A. That is correct.

Q. What is that for?

A. For parking spaces.

Q. He owns land that the union uses and the union pays him for this parking space?

A. That is right.

Q. In other words, he is selling parking space to the union for the land he supplies, his own personal property!

A. Yes.

Q. You have received other checks from outside sources that came through the office?

A. There have been a few, yes.

Q. From what sources were they! Were they from parking lots or what?

A. Yes.

Q. Parking lots!

A. Yes.

Q. Does he own other land inside the city here?

A. I have heard that he does.

Q. You have heard that he does, and these checks have come through. How are the checks made out?

A. The same.

Q. B & B Investment Company?

A. Yes.

Q. Or are they made out to Dave Beck sometime?

A. Well, I wouldn't venture to say.

Q. What do you do with these checks made out to B & B Investment Company and Dave Beck, if they are?

A. I send them up to his office.

[fol. 1794] Q. Dave Beck's office. Who instructed you to do that?

A. I don't believe I received any instructions on it.

Q. Who told you that B & B Investment Company was a company owned by Mr. Beck, or at least a bank account of Mr. Beck's?

A. I really couldn't tell you, sir.

Q. But you automatically sent these up there whenever you got them?

A. Yes.

Q. Apparently one time you were told by someone who had knowledge what the case was that these checks coming through were for Mr. Beck?

A. Yes.

Q. Where is Mr. Beck's office located?

A. In the Teamsters Building.

Q. How many doors away is it from your office?

A. Oh, quite a few doors. It is upstairs.

- Q. On the same level, isn't it?
- A. No, it is not.

Q. Downstairs!

A. Upstairs.

Q. Then these checks that came in for Mr. Beck you had to transfer to his office. They were in your office by mistake!

A. Yes.

Q. In other words, the Joint Council of Teamsters No.

28 and the Western Conference of Teamsters wasn't handling, through you, his private checks.

A. No.

Q. They merely came in in your mail and when you [fol. 1795] found them in your mail you would send them on to Mr. Beck?

A. Yes.

Q. Is that right?

A. Yes.

Q. Except for the checks the Western Conference and the Joint Council 28 were paying Mr. Beck for the use of the parking lots.

A. Except for the Joint Council. I have nothing to do

with the Western Conference.

Q. Then you sent those checks along in the regular course. How did you make those out, B & B Investment Company or Dave Beck?

A. I believe so.

Q. Beg pardon!

A. I believe it was B & B Investment.

Q. Which?

A. B & B Investment.

Mr. Regal: That is all I have.

(Witness excused.)

[fol. 1796]

CERTIFICATE

State of Washington, County of King, ss.:

I, Louise Sartor, one of the official court reporters of the State of Washington in and for the County of King, do hereby certify that I am the official court reporter assigned to the King County Grand Jury convened in May, 1957;

That I was present before the Grand Jury and reported the testimony of Fred Verschueren, Jr. given before said Grand Jury under oath on the 20th day of June, 1957;

That the above and foregoing is a full, true and correct transcription of said notes taken in the above entitled cause, and personally transcribed and typed by me; That the foregoing transcript of testimony is being furnished to the defendant pursuant to Order Granting Defendant Permission to Transcribe Certain Portions of Grand Jury Testimony, signed by the Honorable Lloyd Shorett on the 30th day of April, 1958.

Louise Sartor, Official Court Reporter.

[fol. 1797]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

No. 104594

IN THE MATTER OF THE KING COUNTY GRAND JURY

Testimony of Fred Verschueren, Jr. Taken July 10, 1957

Be It Remembered that on the 10th day of July, 1957 Fred Verschueren, Jr. was called as a witness before the King County Grand Jury, and pursuant to permission granted by the Supreme Court of the State of Washington, and by Order Granting Defendant Permission to Transcribe Certain Portions of Grand Jury Testimony, dated the 30th day of April, 1958, the following transcript of his said testimony is furnished.

FRED VERSCHUEREN, JR. called as a witness, being duly sworn on oath, testified as follows:

Direct examination.

By Mr. Devin:

- Q. Would you state your name, please?
- A. Fred Verschueren, Jr.
- Q. You have testified here before? [fol. 1798] A. Yes sir.

- Q. During 1954, 1955 and 1956 what was your occupation?
- A. I was bookkeeper for—well, the Joint Council of Teamsters No. 28.
 - Q. Were you paid your salary by the Joint Council?

A. Yes sir.

Q. Were you employed by the Western Conference?

A. No sir.

Q. Did you do any business for the Western Conference?

A. No sir.

Q. Did you do any business for the International?

A. No sir.

- Q. Did you do any business for Dave Beck, either personally or as an officer of the Western Conference or International?
- A. Well, I may have, sir. I don't quite follow you there. How do you mean?
 - Q. Did you handle any monies for Dave Beck?

A. Yes sir.

Q. What money did you handle for him?

A. Well, sir, that is why I want to come back and clarify my prior testimony. It was absolutely beyond my recollection that he had turned over monies to me to be held until their proper discretion was realized. I still don't know their proper discretion and I did not recall it until after my prior testimony that I had them on hand. It didn't come up at the time.

Q. What were those monies?

A. Well, it was money that he turned over to me, an envelope sir, and said to hold until their proper discretion was realized. I am not certain as to the amount or anything [fol. 1799] along that line, sir. He mentioned—he did mention something about automobiles and he said to hold it until such a time as—well, they could find out where the money belonged. That is all I know.

Q. Did he turn those envelopes over to you?

A. Yes sir.

Q. Were they sealed?

A. Yes sir.

Q. Do you still have them?

A. Yes sir.

Q. Where are they?

A. They are in the safety deposit box at the Teamsters Building.

Q. Do you have access to them?

A. Yes sir.

Q. What dates were these turned over to you?

A. Well, I have been trying to recall. As best as I can recall, the first one was—well, it was prior to my taking over the Joint Council books. It was sometime in the latter part of 1954, I believe, sir.

Q. When was the next one?

A. Well, it is very difficult for me to put definite dates on it. I believe it was sometime in '55, I couldn't give you definite dates, sir.

Q. How many were there altogether?

A. Well, there were—there are two envelopes that were given to me three different times.

Q. Two envelopes given three different times?

A. What I mean, I brought one envelope back and he put something else in it and I put it back in there. That is [fol. 1800] all I know.

Q. Which envelope was it you brought back, the first or

the second one?

A. The first one.

Q. The one you got in the fall of '54?

A. Yes sir.

Q. What did you take it back for?

A. Well, he said he wanted to put some more in it, that is all.

Q. What did he say that was for?

A. Well, as I say, I believe he mentioned automobiles the first time, but after that I don't recall.

Q. How long after you got the first envelope did you

take it back to him to put some more in it?

A. Sir, I could not say definitely.

Q. Was it a year or less than a year?

A. I would say it was—well, approximately a year. I mean, that is a little difficult to—

Q. When did you get the second envelope?

A. Sir, I cannot pin it down to a date: I am sorry.

- Q. Could you pin it down to the year you got it. Was it
 - A. I would say it was in '55 sometime.

Q. Did you get any envelope in '56?

A. I may have, sir, I can't definitely pin it to dates, no.

Q. Is it usual or unusual for you to receive envelopes like that from Mr. Beck or others?

A. Quite usual, sir.

Q. It is usual?

[fol. 1801] A. Yes sir.

Q. What other instances has he done that?

A. Well, sir, I can't pin it down to instances, but it has happened quite frequently.

Q. What is the occasion that prompts such action? Why

does he do it?

- A. He just asks me to hold it for him, sir, that is all I know.
 - Q. Does he pick it up later?

A. Generally, yes.

Q. Well, what happens when he doesn't pick it up, the other times?

A. I just hold it, sir.

Q. How many of those envelopes are you holding now

A. There are two in the box, I believe.

Q. Is that all?

A. Yes.

Q. Well, if this has happened a number of times then you haven't held any of the other envelopes, he has picked them up, has he?

A. Yes.

Q. Have you ever done anything with the monies in the other envelopes you have held?

A. No sir.

Q. You never paid them to anyone?

A. No sir.

Q. Did he ever instruct you to pay them to anyone?

A. No sir.

Q. When did it occur to you that you had received these envelopes after you testified here?

[fol. 1802] A. Well, when I was contacted by Mr. Beck and he asked me if I still had those envelopes on hand, sir.

Q. When did Mr. Beck contact you in that regard!

A. Well, I believe it was the same day I had testified, sir.

Q. Did you tell him what you testified to here?

A. No sir.

Q. What was the conversation between you and Mr. Beck at that time?

A. All he asked if I still had that money on hand for the cars.

Q. What did you tell him!

A. I said I did.

Q. Did he ask you where it was!

A. No, he just asked me if I had it in the box down there. Well, he knew where it was. I don't think he need ask.

Q. He knew where it was?

A. I presume he did, yes.

Q. Why would he know where it was?

A. Well, because he is the one that told me what to do with it.

Q. What did he tell you to do with it?

A. To put it in the box down there, sir, and hold it.

Q. What boxf*

A. The box at the Teamsters Union.

Q. What box is that?

A. It is in the vault outside my office.

Q. Who has access to that vault?

A. Myself.

Q. You are the only one?

A. Myself and the girls within the office. However, I am [fol. 1803] the only one that has access to this particular box.

Q. Is this a box within the vault?

A. It is a box within the time—within the vault within a time safe. I mean, there is a box within there.

Q. There is a vault and is this a walk-in vault?

A. There is a walk-in vault.

Q. Is that on a combination or time?

A. That is on a combination.

Q. Then you walk into this vault and then is there another vault inside of that?

A. There is a time box.

Q. A time box?

A. Yes, it is a safe. It can be set for a definite period of time.

Q. Who knows the combination of that?

A. Myself and the girl in my office. *

Q. Those are the only ones that know the combination of

A. Of the inner-yes sir, yes sir.

Q. Are those envelopes within that box?

A. Within a deposit box within that box, yes

Q. Is that deposit box locked?

A. Yes sir.

Q. With a key?

A. Yes sir.

Q. Do you have the key to that?

A. Yes sir.

Q. Could you get into that box now if you went up there?

A. Yes sir.

Q. And the time lock is open?

[fol. 1804] A. Yes sir.

Q. If you went there those envelopes would be there?

A. Yes sir.

Q. Do those envelopes have any writing on them?

A. Yes.

Q. What does it say?

A. I don't rightfully recall. I think—well, I would—I am not certain, sir, I would have to look to see.

Q. When was the last time you looked at those envelopes?

A. The last time was after I had talked with Mr. Beck, or after he called me.

Q. What was your answer?

A. It was after Mr. Beck had called me and asked me if the money was still there. I wanted to ascertain definitely that it was.

Q. After he asked you that did you go into the box to

determine whether the money was still there?

A. Yes sir.

Q. Was it there?

A. Yes sir.

Q. Did you look in the envelopes?

A. I have looked in them, yes sir.

Q. Did you unseal them?

A. Yes sir.

Q. Then are they unsealed now!

A. Yes. They have been unsealed prior to that, sir. Q. You said though they were sealed originally!

A. They were.

Q. Did you slip them open or tear them open with your fingert

A. I just tore them open with my finger, yes.

[fol. 1805] Q. Then you looked in to see how much money was there, did you?

A. Yes. I have never-counted it in its entirety.

Q. How much money is there?

- A. I really-well, I would say between \$5,000 and \$6,000 or thereabouts.
 - Q. What is it in! Bills!

A. Bills, yes.

Q. What denomination bills?

A. 20's and 50's, I believe, and 100's.

Q. You don't recall what is written on the envelope?

A. Well, I think Western Conference is written on there and I am not certain, sir, I would have to look again to definitely tell.

Q. Now, would you repeat again, please, just what Mr. Beck told you when he gave you these envelopes which, as I understand, were sealed at the time he gave them to

vou?

A. Yes sir.

Q. What did he say?

A. Well, it was something to the effect that—as I say, hold these until we can determine the proper discretion and then, as I say, he mentioned something about automobiles, sir, and, as I say, it hasn't entered my mind since

that time. I just completely-

Q. (Interposing) Did he tell you, Mr. Verschueren, at that time that he was giving you the money in currency which was the purchase price of a car belonging to either the Joint Council or a car belonging to the Western Conference or a car belonging to the International and he requested you to deposit that money in the proper account? [fol. 1806] A. No sir.

Q. He didn't tell you that?

A. No. Not in so many words. All he said was something about automobiles, sir, that is all I recall about.

Q. Did he tell you to deposit the money in any account?

A. No.

Q. He didn't?

A. No sir.

Q. He told you to hold it?

A. Yes sir, that is why it is still there. I had no idea where it should go so I couldn't very well deposit it.

Q. You are sure of that?

A. Yes sir. To the best of my recollection, yes sir.

Q. Did he give you any money which he said belonged to the Joint Council for the sale of a car, Joint Council 28?

A. Nothing definite along those—along that line ever came up. As I say, that is why I was holding the money, I didn't know where it belonged.

Q. You had completely forgotten about that when you

testified here?

A. Yes sir.

By Mr. Lawrence?

Q. When did he give you the last envelope?

A. It was—well, it is very difficult to say. It has been sometime ago.

Q. Estimate as near as you can for us. There were three

transactions, when was the last one?

A. Well, I would say early in '56, that is about the best-

Q. Early in '56. Would you say February? [fol. 1807] A. Well, that is as close as—

Q. (Interposing) Now, Mr. Verschueren, that is only five months ago. February, March, April, May, June and now we are in July—

Mr. Devin: He said '56.

(continuing) That is a year and five months ago. Can you recall what he said to you at that time?

A. Something to the effect of, "Put this with the rest

of it."

Q. Rest of what?

A. Well, the balance of the cash that I was holding, sir.

- Q. You have held a lot more cash than these three envelopes, you say for him so which would you know to put it with?
 - A. Well, he just said put it with the other envelopes.

By Mr. Devin:

- Q. Mr. Verschueren, I presume you would have no objection to someone going up with you into that vault now and bringing down those envelopes so we can see them!
 - A. No sir.
- Q. But to your own knowledge you have never at any time deposited to the account of Joint Council 28 or Western Conference of Teamsters of International Brotherhood any sums of money received by you from Dave Beck from the sale of a car?
 - A. No sir.
- Q. Now, when you were here before, Mr. Verschueren, you said that if there was any—if any money like that had been paid it would be reflected upon the books of the Joint Council and you went down and examined the books of the Joint Council at that time, did you not?

 [fol. 1808] A. Yes sir.
 - Q. At that time you said there were no such entries made.
 - A. That is correct, sir.
 - Q. That is still your testimony?
 - A. Yes.
- Q. Now, during that examination, Mr. Verschueren, we were talking quite a bit about cars, were we not?
 - A. Yes sir.
- Q. And when you returned in the afternoon session, and I asked you if you had examined the books and you said: "I did, sir." And I asked you, "Did you find any record of that sale? No, not in the records I examined, no sir. Did you find in the records you examined a record of any sale of a car during that period. No sir. Did you find in the records an entry of any amount approximating \$1850 as a receipt to the Joint Council? No sir. In your opinion, Mr. Verschueren, were the records you examined the complete and total records of the Joint Council 28? Yes sir, for that particular time. There were no other records in which such a transaction might have been entered, is

that correct, that you know of during that period? Well, I can't say definitely that, no sir. It could have been channeled into another fund. I couldn't really say. Well, if it had been channeled into another fund would it have been entered on the books which you looked at? Not necessarily, no. What other books are there! I mean, there is a possibility that it might have gone into the Western Conference, I couldn't say that. Is it possible that any transaction of the Western Conference could have gone into the Joint [fol. 1809] Council books! Yes sir, well now, I can't say that. I didn't examine that. How could it have gotten to the Western Conference if it was a car of the Joint Council! I couldn't determine that, but I am just saying there is that possibility. Have you ever known of an instance where that happened? I have known a title to read improperly, ves sir, whereas it should have been a Joint Council car or vice versa and it was registered improperly. It has occurred in the past, yes. In other words, you have known of instances where property which rightfully belonged to the Joint Council was registered in the name of the Western Conference. Yes sir, through error. But do you know of any instance where property belonging to the Joint Council and registered in the name of the Joint Council was ever sold and the money for the sale of that ended up in the Western Conference. Not for a fact, no sir." Now, Mr. Verschueren, do you recall that testimony?

A. Yes sir.

Q. From this testimony, most of our inquiry was directed at automobile and car transactions.

A. Yes sir.

Q. Well, do you have any explanation that you would like to explain to us now why these unusual transactions, or what appear to be unusual transactions, of these envelopes involving car deals did not occur to you at that time?

A. I have no explanation, no sir, but it certainly did not enter my mind in the slightest degree. I had no recollection at that time of it whatsoever.

[fol. 1810] Q. Well. I would like to ask you, Mr. Verschueren, to go with Mr. Lawrence at this time out to the Teamsters Union and pick up those envelopes and bring

them down. And if there is any question about the protection of you while you are carrying so much money, we will send a policeman along to guard you. Would you do that please?

A. Certainly.

(Witness excused with Mr. Lawrence and recess taken.)

FRED VERSCHUEREN, JR. resumed the witness stand.

By Mr Devin:

- Q. Mr. Verschueren, did you go to the vault at the Teamsters Hall?
 - A. Yes sir.
 - Q. And bring back the envelopes you spoke of?
 - A. Yes sir.
 - Q. Do you have them with you?
 - A. Yes sir.
 - Q. Could we see them, please?
 - A. (Witness hands two envelopes to Mr. Devin.)
- Q. Exhibit 76 appears to be a plain envelope with "Stamps" written in red ink on the front of it. It is sealed. Is that the envelope that you said you had broken open or not?
 - A. Well, I broke both of them open.
 - Q. This one has been broken open?
 - A. Yes.
 - Q. And resealed?

[fol. 1811] A. Yes. This may or may not be the original envelope, I couldn't say to that, either, as far as that is concerned.

Q: Would you have put it in another envelope?

A. I would have, yes.

Q. Do you recall putting another envelope on?

A. Well, sir, over the two years I really couldn't say. I did cash checks out of here at one time or another and then I reimbursed this account, so—

Q. You would use that money for cashing checks?

A. Yes sir, when the bank is closed I would cash checks and then put the cash back in here when I could obtain the cash.

Q. Would you reseal them each time? Reseal the envelopes each time you took cash out?

A. Generally—sometimes I would, yes sir.

Q. Would you put an I.O.U. in there too?

A. I generally put the check.

Q. The check in.

A. When it came time to cash it I would cash it and put

the money back in here.

Q. Exhibit 77 appears to be a sealed envelope with the words "Western Conference of Teamsters, 553 Denny Way, Seattle 9, Washington" and written in pencil are the words: "Western Conference of C.S. is that what that says, or just Western Conference?

A. Well, Western Conference or J.C. isn't it?

Q. J.C.

A. Joint Council, I guess that is.

Q. Who wrote that?

[fol. 1812] A. That appears to be Mr. Beck's handwriting.

Q. That appears to be Mr. Beck, Sr.'s?

A. Yes.

Q. Mr. Verschueren, I want to warn you at this time that you are under oath and that what you say here, if found to be false, can be perjury and you could be guilty of perjury for testifying falsely under oath.

A. Yes sir.

Q. You are under oath.

A. Yes sir.

Q. And the penalty for perjury is fifteen years in the penitentiary, it is a felony.

A. Yes sir.

Q. Now, I want to give you every opportunity to state the truth.

A. Yes sir.

Q. You appear to have already changed your testimony from what it was a few minutes ago when you were here before. You said then that you put these envelopes in the box and they remained there and you didn't open them.

A. No sir.

Q. Except for one envelope that you opened and put some more money in that Mr. Beck put some more money in, and then you put it back.

A. No sir, I said they had been opened, I had opened them at a prior time. Now, I believe you will find—

By Mr. Washington:

Q. (Interposing) When he had gone back, when Mr. Beck called he said he opened it after Mr. Beck called him and not since then, that was his testimony.

A. I didn't say I had opened them prior to that.

[fol. 1813] Q. You didn't make that statement though.

A. Yes, I did.

By Mr. Devin:

Q. Let's read your testimony: "What were those monies! Well, it was money that he turned over to me in an envelope, sir, and said to hold until their proper discretion was realized. I am not certain as to the amount or anything along that line, sir. He mentioned—he did mention something about automobiles and he said to hold it until such a time as—well, they could find out where the money belonged. That is all I know. Did he turn that—those envelopes over to you? Yes sir. Were they sealed? Yes sir. Do you still have them? Yes sir. Where are they? They are in the safety deposit box at the Teamsters Building. Do you have access to them? Yes sir. What dates were these turned over to you? Well, I have been trying to recall as best as I can recall the first one was-well, it was prior to my taking over the Joint Council books. It was sometime in the latter part of 1954, I believe, sir. When was the next one? Well, it is very difficult for me to put definite dates on it. I believe it was sometime in '55, I couldn't give you definite dates, sir. How many were there altogether? Well, there were—there are two envelopes that were given to me three different times. Two envelopes three different times? What I mean, I brought one envelope back and he put something else in it and I put it back in there. That is all I know. Which envelope was it you brought back, the first or the second one? The first one. The one you got [fol. 1814] in the fall of '54? Yes sir. What did you take it back for? Well, he said he wanted to put some more in it, that's all. What did he say that was for? Well, as I say, I believe he mentioned automobiles the first time, but after that I don't recall. How long after you got the first envelope did you take it back to him to put some more in it? Sir, I could not say definitely. Was it a year or less than a year! I would say it was-well, approximately a year. I mean, that is a little difficult to-. When did you get the second envelope? Sir, I cannot pin it down to the year. I am sorry. Could you pin it down to the year? Was it '55 or '54! I would say it was in '55 sometime. Did you get any envelope in '56? I may have, sir. I can't definitely pin it down to dates, no. Is it usual or unusual for you to receive envelopes like that from Mr. Beck or others? Quite usual, sir. It is usual? Yes sir. What other instances has he done that? Well, sir, I can't pin it down to instances, but it has happened quite frequently. What is the occasion that prompts such action? Why does he do it? He just asks me to hold it for him, sir, that is all I know. Does he pick it up later? Generally, yes. What happens when he doesn't pick it up, the other times? I just hold it, sir. How many of these envelopes are you holding now? There are two in the box, I believe. Is that all! Yes. Well, if this has happened a number of times then you haven't held any of the other envelopes, he has picked them up, has he? Yes. Have you ever done anything with the monies in the other envelopes you have held? No sir. You never paid them [fol. 1815] to anyone? No sir. Did he ever instruct you to pay them to anyone? No sir. When did it occur to you that you had received these envelopes after you testified here? Well, when I was contacted by Mr. Beck and he asked me if J still had those envelopes on hand, sir. When did Mr. Beck contact you in that regard? Well, I believe it was the same day I testified, sir. Did you tell him what you testified to here? No sir. What was the conversation between you and Mr. Beck at that time? All he asked if I still had that money on hand for the cars. What did you tell him? I said I did. Did he ask you where it was? No, he just asked me if I had it in the box down there." I will skip some and try to get down to the matter we are interested in. "After he asked you that did you go into the box to determine whether the money was still there? Yes sir. Was it there? Yes sir. Did you look in the envelopes? Yes, I have

looked in them, yes sir. Did you unseal them? Yes sir. They are unsealed now? Yes. They have been unsealed prior to that, sir. You said though they were sealed originally! They were. Did you slip them open or tear them open with your finger! I just tore them open with my finger, ves. Then you looked in to see how much money was there. did von? Yes. I have never counted it in its entirety. How much money is there! I really-well, I would say between \$5,000 and \$6,000 or thereabouts. What is it in, bills! Bills. yes. What denomination bills? 20's and 50's, I believe, and 100's. You don't recall what is written on the envelope! [fol. 1816] Well, I think Western Conference is written on there and I am not certain, sir, I would have to look again to definitely tell. Would you repeat again, please, just what Mr. Beck told you when he gave you these envelopes which as I understand were sealed at the time he gave them to vou. Yes sir. What did he say? Well, it was something to the effect that as I say, hold these until we can determine the proper discretion" and so forth.

A. You asked me in there if they were unsealed when I went into the box and I said yes they had been unsealed

prior to that time.

Q. You said they are unsealed now. They are not, are they?

A. Pardonf

Q. My question to you a little while ago was, "Did you unseal them?" and you said, "Yes sir". My question was "They are unsealed now?" and you said, "Yes, they have been unsealed prior to that."

A. Yes sir.

Q. I said, "They were sealed originally?" Answer: "They were." Then I asked you, "Did you slip them open or tear them with your finger? I just tore them open with my finger." You tore these two open with your finger?

A. Slippedemy finger along them, yes sir, and then re-

sealed them again.

Q. Then you resealed them?

A. Yes.

Q. Did you have glue there you resealed them with?

A. No, just re-licked them, sir.

Q. When did you do that? When did you reseal them?

[fol. 1817] A. Well, that very day.

Q. What?

A. That same—the same day I opened them. I didn't realize they were resealed as well as they were because I did slip them open, so to speak, with my finger.

Q. I think you said, as I recall that you opened one of them, the first one you got from him, to put in more money.

A. Yes sir.

Q. Do you recall which envelope that was?

A. That is that one (indicating).

Q. That is Exhibit 77 that has the wording Western Conference. Now, you opened that at the time that he told you to bring it back to him that he wanted to put some more money in it, is that true?

A. Well, I don't rightfully recall if I opened it or if

he did, sir.

Q. Did this occur at your office, at the office of the Joint Council?

A. No, it occurred at his office.

Q. Where is his office?

A. His office is at the Teamsters.

Q. Where is it in relation to this safety deposit box?

A. It is down the hall and upstairs. I would say 150 to 200 feet, something like that.

Q. Did he ask you to bring the envelope back to him?

A. Yes.

Q. Will you just state in your own words, Mr. Verschueren, how this came about? What did he say to you and what did you reply and what did you do in reference to this [fol. 1818] second time that he gave you money?

A. Well, to the best of my recollection he called me and

asked for the envelope.

Q. On the phone?

A. I believe so, either that or someone came in or he may have come into the office, I don't recall, sir, but—and I definitely don't recall whether I opened the envelope or whether he did.

Q. He called and said what?

A. That he wanted the envelope, I believe, or words to that effect.

Q. For what purpose?

A. Well, he didn't say at that time.

Q. He didn't say what he wanted it for. Did you take

him the envelope?

A. I am not certain whether I took him the envelope or whether he came in, sir. I am really not absolutely certain.

Q. Then what happened?

A. Well, one or the other of us opened it and he put some money in it.

Q. Did you know how much he put in?

A. No sir.

Q. What did he say to you at that time?

A. Just, "Put this back where it was" or words to that effect.

Q. That is all he said?

A. Whether he just handed it back to me, I wouldn't know.

Q. Did he say what it was for?

A. As I said before, I don't think it was mentioned the [fol. 1819] second time.

Q. At that time you tore the envelope open with your

finger, did you?

A. Either he or I did, I don't remember.

Q. You put the money in and resealed it.

A. He put the-

Q. He put the money in.

A. Yes.

Q. And you resealed it, or did he reseal it?

A. I am not too positive on that, sir.

Q. Had that ever occurred before? Had he ever, with these other envelopes which he gave to you to keep for him, had he ever opened one of them and put other money in?

A. Yes, yes, I believe he did.

4 Q. When did that happer?

A. Oh, over the years. Quite a few times.

Q. What was the purpose of that money?

A. Well, that was his own, to my knowledge. I was just putting it in safekeeping for him.

Q. Why would he put it in safekeeping, do you know?

A. No sir.

Q. Did he ever tell you what it was for!

A. No sir.

Q. How often would that happen, Mr. Verschueren?

A. Oh, I have no way of definitely recalling that; in-

Q. Innumerable times?

A. Yés sir.

Q.

Q. Now, Mr. Beck would come in and give you an envelope with money in it and tell you to put it in your safety deposit box?

[fol. 1820] A. Yes.

Q., Is that right?

A. Yes.

Q. He wouldn't tell you what it was for?

A. Just tell me to hold it.

Q. Just tell you to hold it.

A. Uh huh.

Q. Is that what he told you in these two cases?

A. Yes sir.

Q. He told you to hold it?

A. Yes, except he did, as I say, mention something about automobiles originally.

Q. How long would you usually hold that money?

A. Various periods of time, sir; sometimes a year, sometimes less, not over a year.

Q. Never over a year?

A. (No response.)

Q. This is the only instance in which you have held money like that for three years almost, from 1954?

A. I would say so, yes.

Q. Now, you stated a moment ago that you used this money from time to time to cash checks with?

A. Yes sir.

Q. What would you do, would you unseal the envelope each time and then reseal it?

A. Not always. I don't imagine if I had checks in there I wouldn't reseal it again until I pulled the checks out and put cash back in.

Q. How many times would you say you did that, cashed checks out of this fund?

[fol. 1821] A. I have no idea, sir. Quite a few times.

Q. Fifty

A. Well, possibly.

Q. Each time you would cash a check you would put the

check in there and then how would you get the money back in there?

A. I would obtain the cash from—when the bank opened or when we had sufficient in receipts and put it back in there and then deposit the checks.

Q. You would take the check out and go and cash it

and redeposit the money!

A. Yes.

- Q. Were these checks ever in odd denominations, that is, dollars and cents?
 - A. Yes.
 - Q. Would you put the change back in there!

A. Not necessarily, no.

Q. Was there any change in there when you got it?

A. No, no there wasn't.

Q. Would you ever put change in there then?

A. No.

Q. You would only cash it in bills?

A. Yes sir.

Q. Well, suppose the check was for \$10.50 what would you take out, a \$10.00 bill?

A. Yes.

Q. Then what happened to the fifty cents?

A. I would obtain the fifty cents from the office fund. That would only be in cases whereas the bank was closed and I didn't have sufficient cash to cash it, the members [fol. 1822] or individual's check, and it would be necessary to rely on this fund.

Q. What was your job down there at that time, book-

keeperf

A. Yes sir.

Q. Was it your duty to cash checks?

A. Yes sir.

Q. How much money did the Joint Council 28 usually carry on hand to cash checks with?

A. At that time—oh, we had a \$400, I believe office fund,

petty cash fund.

Q. The times you would cash checks would be when you would use up all that \$400?

A. Oh yes sir, it would be completely in checks, yes.

Q. Then you would cash them out of these funds?

A. Yes sir.

Q. Would you seal the envelope? You said you wouldn't

A Not always,

Q. Do you know how you happened to seal it the last

A. No.

Q. Did I understand you to say you had done that in-

A. Yes sir.

Q. How did Mr. Beck happen to tell you about this? How did he happen to remind you of it?

A. I don't know sir.

Q. When did he remind you of it, as soon as you left here the last time you testified?

A. Shortly thereafter, yes sir.

Q. Mr. Verschueren, when he told you about this and refreshed your recollection, as you said, why didn't you call [fol. 1823] us and say that you wanted to change your tes-

timony?

A. Sir, I contacted a lawyer and asked if he thought I should file an affidavit and he said no it would be far better if I came back here and re-testified and I was planning on doing so, either later on in the week or the first part of next week.

Q. You testified more than a week ago, wasn't it, June

20th 1

A. Yes sir.

Q. June 20th. That is three weeks ago and you found it out right after that, yet you have said nothing to anyone

about it, none of us anyhow?

A. No sir, as I say, I wanted to find out what the proper thing to do would be and I have been very busy this month and will be for the balance to the 15th, and I wanted to put it off.

Q. Is McGovern your attorney!

A. He has been acting as such.

Q Was he the one that you called?

A. Yes sir.

Q. When did you call him?

A. Well, let's see, I believe it was about a week and a half ago.

Q. When?

A. Approximately a week and a half ago. I am not certain when I talked to him.

Q. How long after you learned of these deposits from

Dave Beck did you call McGovern f

A. Approximately that time, sir. I didn't know exactly what to do to begin with.

Q. Did Mr. McGovern then advise you not to do any

thing !

[fol. 1824] A. No sir, he did not.

Q. What did he advise you?

A. He advised me I should come back and testify, sir, rather than file an affidavit.

Q. But you haven't called our office, have you, to ask to come back and testify?

A. No sir, I have not.

Q. A week and a half ago would be the latter part of June. How many days after you testified here did you talk to Dave Beck?

A. I believe it was the same day, sir.

Q. That would be the 20th of June. You waited about ten days before you called your attorney?

A. Yes sir, over the week-end, yes sir.

By Mr. Regal:

Q. Mr. Verschueren, Exhibit 76, which I have just now placed in a cellophane envelope so no further marks can be made on the outside of the envelope now. It is placed in a cellophane envelope, is that correct?

A. Yes.

Q. No further marks can be made on the outside of this envelope while it is here.

A. Yes.

Q. This is the envelope you used to cash the checks?.

A. I may have used either.

Q. You might have used either. Either this one or Exhibit 77, which is also placed in a cellophane envelope, isn't that correct?

A. Yes sir.

Q. What makes you think you might have used either one?

[fol. 1825] A. Well, I am fairly certain I used either one or both, yes.

Q. Did you cash a check in excess of, say, \$1,000 or \$400

or \$5001

A. \$400 or \$500, possibly \$600.

Q. Never in excess of \$1,000?

A. I don't recall any.

Q. Could I have the box, please.

A (Witness hands box to Mr. Regal.)

Q. Were these envelopes always in this box?

A. Yes sir.

Q. Are these the original envelopes you first used at the beginning of the thing?

A. I am not certain.

Q. Have you changed envelopes?

A. I may have, yes. I am not certain.

Q. When would you have changed them?

A. Oh, sometime during the cashing of the checks, one envelope happened to wear out or something, I would change it.

Q. When did you change it last, would you think? Within

the last few months?

A. Possibly yes sir.

Q. Did you write Western Conference and Joint Council or whatever it says on that, is that your handwriting?

A. No.

Q. Do you know whose it is?
A. It resembles Mr. Beck's.

Q. Do you know when he wrote that on there?

A. No sir.

[fol. 1826] Q. If you changed envelopes Mr. Beck was there at the time?

A. No, not necessarily.

Q. Did he write on it after you had changed envelopes and he came in—

A. I didn't say I had changed envelopes, sir. I say I may have.

Q. If Mr. Beck's signature is on there, this could be the original envelope?

A. Could be.

Q. Could you say this is the original or would Mr. Beek sit down and write Western Conference on this after he had already turned the money over to you. Would he have done that, a man in his position as President of the International, would he say, "Let me write on the envelope." Did he do that?

A. Not to my knowledge.

Q. He gave you an envelope with Western Conference and Joint Council on it.

A. Yes.

Q. This is the envelope, isn't it?

A. I believe it is.

Q. These smears that are made on here, they appear like they have been made purposely to make it look old, isn't that true. Take a good look at the smears, they go down very definite.

A. I wouldn't say so.

Q. You wouldn't say so. The F. B. I. may have a different version. You understand they can determine that, don't you!

[fol. 1827] A. Yes.

Q. You know that. Do you want to tell us when he signed this? You still say he signed this in October of '54 when he gave it to you? Do you want to change your testimony or not?

A. I don't care to change my testimony. He must have signed it.

Q. We want to know the truth.

A. I am telling you the truth, Mr. Regal.

Q. All right. Mr. Devin asked you about these envelopes. He told you about the penalty for perjury. You are the person that is on the stand, you are the person under oath down here, do you understand that?

A. Yes sir.

Q. We are concerned with one thing and one thing only, the truth.

A. Yes sir.

Q. Now, Mr. Beck gave you this envelope in October, 1954, is that your testimony?

A. Either that one or the other one, sir.

Q. This is Mr. Beck's handwriting, is it not?

A. Yes.

Q. He handed you this envelope with his handwriting on it at one time and one time only, isn't that true?

A. Yes, but it is not necessarily the one he handed me

in October of '54.

Q. I thought you testified to Mr. Devin it was the first envelope that had Western Conference on it, the other envelope, other material he gave you at a different time. You testified the first envelope he gave you had Western Conference and Joint Council on it.

[fol. 1828] A. I believe so.

Q. That is the one he gave you October of '54, isn't that correct?

A. Well, you are confusing me now.

Q. I am not trying to confuse you, sir. I want you to tell the truth.

A. I am telling the truth.

Q. There is no reason for you to go to the penitentiary for somebody else.

A. I am not even thinking about that, sir.

Q. Well, I am thinking about that, sir.

A. I am telling you the truth so far as I know it.

Q. Let us know the truth, if you will. This is the envelope you got in October of '54 (indicating).

A. I believe that is the one, yes sir.

Q. That is your testimony.

A. To the best of my recollection, yes sir.

Q. This envelope (indicating) you got at another time. What was the date on that, please?

A. I am not even certain that is the same envelope.

Q. Who wrote "Stamps".

A. I have no idea.

Q. Is that your handwriting?

A. No.

Q. Is that the handwriting of a secretary in your office? We are referring to Exhibit 76.

A. Well, I do not recognize it at all, sir.

Q. It is very legible handwriting, however.

A. Yes.

Q. It is written in red ink and says "Stamps" and is [fol. 1829] underlined three times, is that correct?

A. Yes.

Q. This is the box (indicating) these envelopes were placed in?

A. Yes sir.

Q. When you got the envelopes you placed them in the box in this fashion (indicating) and you took this one (indicating) and of course we are using it in the cellophane bag all the time, and put it in in that fashion (indicating).

A. Yes.

Q. Do you know how much is in the top envelope, the second one!

A. No.

Q. You put it away into a special place in the vault?

A. Yes sir.

Q. You are the only one that has a key to it?

A. Yes sir.

Q. The secretary doesn't have a key to it?

A. No.

Q. This is your private vault for keeping money.

A. Yes sir.

Q. For whom!

A. It is a vault within—or it is a time safe within the vault at the Teamsters Building.

Q. You have a large vault everybody uses and then you

have a time safe!

A. Inside.

Q. In the time safe, although other people can get in it, there is this locked box?

A. Yes.

[fol. 1830] Q. This box goes in a little slot?

A. Safe deposit-

Q. With a door on it?

A. Yes.

Q. And you use this for Mr. Beck's money?

A. Not necessarily, no.

Q. Have you used it for other people's money?

A. I have used it for the organization's money when there was too much on hand and we did not have time to get in the bank before 3 o'clock, we would put it in a box.

*Q. Do you get cash from your depositors, from the people that pay the dues?

A. Yes sir.

Q. You get cash from the various locals, you don't get

A. Both, sir.

Q. You do get cash?

A. Yes sir.

Q. You keep all the cash you get in this box?

A. No sir.

Q. Where do you keep the cash?

A. We have various inner compartments, such as that.

Q. In this safe?

A. Yes sir.

Q. Are you the only one that has the key to those?

A. Yes sir.

Q. Then you are apparently the keeper of the cash.

A. So to speak.

Q. There have been times when you wanted to cash a [fol. 1831] check for somebody and there hasn't been enough cash on hand in other boxes, so you go into Mr. Beck's box and get the cash.

A. Not Mr. Beck's box.

Q. He gave you the cash and told you to keep it for him.

A. Yes sir.

Q. You didn't know where it was supposed to go.

A. No sir.

Q. Mr. Beck was the only one authorized to take it, wasn't he?

A. Yes sir.

Q. No one else could come in and demand that money, could they?

A. No sir.

Q. Why did you use his money to cash checks? Did he give you authority to use it to cash checks?

A. No sir. I am sure that he would not have cared.

Q. Whom did you cash checks for? Name one person or two or three if you can. And tell us the approximate times?

A. Various members, sir.

Q. Members of what?

A. Locals in the building.

Q. The officers?

A. No sir. Well, possibly some of the officers.

Q. They were being paid by the International or paid by the Western Conference or Joint Council?

A. Yes sir.

Q. Who were they? When did they come in?

A. Oh, sir, honestly, I cashed so many checks through our office I could not definitely sit down and enumerate any

[fol. 1832] one individual.

Q. Mr. Verschueren, do you want us to believe you had this money in this box in this fashion (indicating) with this envelope on top (indicating) Exhibit 77, with "Stamps" written on the outside of it, in this box, Exhibit 78, in a private compartment. This money was put in there at Mr. Beck's request.

A. Yes sir.

Q. That is right. You took these envelopes out and you cashed checks from them?

A. Yes sir.

Q. How much money is in No. 77 that envelope (indicating)?

A. I couldn't tell you.

Q. Approximately how much. You told us before how much was in both. How much is in this one (indicating)?

A. Well, there must be around \$2,000 or \$3,000.

Q. \$2,000 or \$3,000. What would possibly make you take this envelope (indicating) and lay it aside and take this one (indicating). Isn't it possible you cashed checks only with this one (indicating)?

A. No sir, it isn't. There is also the definite possibility we could not get a payroll signed or something along that line, and therefore in order to make payroll I would have

to tap that fairly heavy.

Q. You used Mr. Beck's money?

A. Yes sir.

Q. To what extent?

A. I couldn't say.

Q. You would put payroll slips in here and I. O. U.'s and things of that nature?

[fol. 1833] A. I have, yes.

Q. To how much? How much money at one time?

A. I couldn't say. I know it went over one envelope.

Q. It went over one. Did it ever go over both?

A. No.

Q. How many times did you go into 76, this envelope (indicating) Mr. Beck gave you in October, 1954?

A. I could not say, sir.

Q. Was it more than once, do you think?

A. Yes.

Q. Do you recall the situation?

A. I believe that was the situation, we couldn't get a payroll out.

Q. What was that situation?

A. We couldn't get a payroll signed.

Q. Why not?

A. The individuals were not available.

Q. What individuals, sir?

A. Well, some of the individuals with certain organiza-

Q. What organizations? What individuals? This is—this must be something that is pretty important when you have to take out \$4,000 or \$5,000 in cash to pay them. Whom did you pay? What individuals are you talking about that couldn't get the payroll out?

A. Well, we couldn't get signed checks is what I am talk-

ing about.

Q. What checks are you talking about?

A. Joint Council or Western Conference, it could be.

Q. It could be most anything. What checks were they?

A. I couldn't definitely say. I know it has occurred.

[fol. 1834] Q. How many different times did it occur?

A. Oh, possibly once or twice.

Q. Once or twice you had gone from the first envelope, No. 76 to the second one, No. 77 and dip into this cash, is that right?

A. I could have taken from either, sir. I definitely could

not say.

Q. Did you ever take all the money from both?

A. No.

Q. You never did?

A. Not to my recollection.

Q. You have been into both envelopes at least once?

A. Yes.

Q. And maybe twice?

A. Yes.

Q. Maybe three times?

A. Very possible.

Q. Maybe ten times?

A. Maybe many times more, yes.

Q. You have no recollection of that at all?

A. As to how many times?

Q. Yes.

A. No, not definitely.

Q. This is very vague, the whole handling of this thing to you?

A. Not-

Q. I mean, the fact cash is in these envelopes is very vague to you. You don't know how much money and you don't know how many times you have been in them, do you! [fol. 1835] A. I certainly wouldn't count the number of times I had been into it.

Q. You couldn't count, but you would have a general idea how many times you had gone into a box in which you were keeping funds for Dave Beck, would you not. You never

had authority to go in here, did you?

A. As I say, I certainly—I know Mr. Beck wouldn't have

questioned my authority.

Q. You just assume he wouldn't. He gave you the money. You didn't know what it was for, and didn't know whether it was his personal account he wanted you to keep for him so he could have money to travel or what, did you?

A. As I say, he only mentioned one time I was to hold

that.

Q. Mentioned what?

A. Concerning the automobiles, that is all.

Q. What automobiles?

A. Well, the automobiles that have been sold, that is all

Q. Did he say that!

A. He mentioned something about automobiles, that is all, the first time.

Q. Why did he say automobiles that could have been sold or were sold. Is that something you derive from our hearing here?

A. No, the only thing-

Q. What did he say?

A. Originally, as I said, Mr. Regal, he gave me this first envelope, whichever one it is, which one you have determined, I suppose—

[fol. 1836] Q. I haven't. You said it was Mr. Beck's handwriting. You said he wrote on the first one he gave you in

October, 1954.

A. Yes.

Q. This is it then, No. 77.

A. If that is the same envelope, yes.

Q. Well, you said it was. Apparently it is as far as you know?

A. So far as I know, yes.

Q. He never came in and opened this box when you weren't there, did he?

A. No.

Q. Did he at any time come in and take another envelope and sign it in this fashion while you were there and handling this money for him?

A. No. I may not have been present when he opened the

envelope, I don't recall that.

Q. You did give him the envelope at various times to

A. No, only the once when he said he wanted to put some-

thing else in it.

Q. Didn't you stay right there with him when you handed him an envelope filled with hundred dollar bills and \$2,000 or \$3,000?

A. Well, as you say, it is his money, I mean, I presume it is his money. It is not my prerogative to stay there and

definitely watch what he was doing.

Q. You presumed it was his too, at the time, if you didn't stay there and watch him?

A. I had no idea, sir.

Q. Where did you go when you handed him the envelope? [fol. 1837] How long did it take him to put this money in?

A. That I don't recall.

Q. Where did it take place?

A. In his office, I believe.

Q. Did he call you to his office?

A. I believe so.

Q. Did he ask you to bring the envelopes?

A. The envelope, yes.

Q. Just the one envelope?

A. Yes.

Q. Weren't there two envelopes at the time?

A. Not at that time, I don't believe.

Q. I thought you testified before there were two envelopes. He gave you one in October, one in September of '55 and the third time he merely put the money in the third envelope?

A. No, it was the second time, I believe, he put the money

in the same envelope.

- Q. If you testified otherwise the first time, this is the correct testimony now. It is the second time he brought money—put money in the envelope that was already there, is that correct?
 - A. Yes, I believe that is correct.

 Q. Well, is that what happened?

A. To the best of my recollection, yes sir.

Q. He put it in this envelope then, this Exhibit 77?

A. Yes sir.

Q. When he did that he called you to his office?

A. As I recall, yes sir.

Q. What did he say to you when he called you to his office?

[fol. 1838] A. Sir, I have no recollection.

Q. Did he say, "Bring the nvelope, bring the box or come up here and talk to me." What did he say. He must have said something about envelopes.

A. He definitely must have, but I don't recall his very

words.

Q. I am not asking for the very words, give us the gist of it.

A. It must have been something about bring up the envelope you are holding. That is all I can remember.

Q. How many times did you put money into this Exhibit 77 or did he put money into it, as far as you know?

A. Only twice.

Q. Did you ever put money into it?

A. Only when I cashed checks.

Q. You cashed checks from the envelope and then replaced the money?

A. Yes.

Q. Did you replace the same denominations that were criginally put in?

A. Not always, no.

Q. The same amount?

A. Oh yes.

Q. If there were checks in any odd pennies or any odd amounts you would pay it out of your petty cash?

A. Yes, and put the proper amount back in there.

Q. Would you put a slip in there at the time?

A. Yes, if the check wasn't-

Q. Was this a usual thing you did quite a bit all the time because you run short of cash at the office?

[fol. 1839] A. It wasn't unusual.

Q. How long would it be before you would replace this?

A. That, probably, at the outset.

Q. Was that a regular procedure of yours then every month when the bills were all paid to go back into this cash box and replace all of the money?

A. No, no it wasn't.

Q. When did you do it?

A. Well, whenever I happened to think about it.

Q. Are there any—in here right now—any checks or LO.U.'s!

A. No.

Q. How do you know! It is sealed.

A. Because I checked it the day after I testified here.

Q. When was the last time you used any of this money for cashing checks?

A. That was just prior to then, I believe, or thereabouts,

I am not sure.

- Q. What other money is in these boxes in the safe out there?
- A. The regular receipts as they turn over and are deposited.

Q. Are they reflected on the books of the union?

A. Yes sir.

Q. Of the Joint Council. It is your job to put them on the

A. Yes.

Q. When Mr. Beck gave you this money and told you to keep it for him, you assumed it was his money because you didn't put it on the books, didn't endeavor to count it or do anything of that nature with it.

A. No. [fol. 1840] Q. You just kept it for him. He had trust in you and you put the money in a safe place and kept it for him?

A. Yes.

Q. Then you assumed he wouldn't object if you cashed checks from it, from his money?

A. That is correct.

Q. Because you knew the checks were good, or did you!

A. Knew the what?

Q. The checks were good. They weren't bad checks. You have heard of bad checks!

A. I knew the checks were good.

Q. What kind of checks were they?

A. Payroll checks, mostly members.

Q. Western Conference and Joint Council?

A. Well, in various funds and concerns. As I say, payroll checks. An individual would come in and we didn't have sufficient cash.

Q. Didn't you take care of your payroll by check?

A. Definitely.

Q. Do you make a practice to cash the checks after you issue them, payroll checks?

A. No, as I say, there were instances when it was im-

possible to obtain signatures.

Q. Can you recall, after the numerous times that you have been into this box here to get the money, the name of two or three people that you have cashed checks for and their position in the union?

A. It could be any number, yes.

Q. Give us any number then. Tell us who they are so we can have them down here and ask them whether they have ever cashed a check with you and maybe they will [fol. 1841] remember. I know you have a good memory on the dates of these three things.

A. Russ Gallagher.

Q. Who is het

N

A. He is with the Cannery Council. I mean, I could practically name everybody in the building.

Q. Name those that probably cashed checks or did cash

checks with you that you know of?

A. Well, my own father and—well, as I say, you could name almost anyone in the building that I have cashed

checks for them at one time or-

Q. All these checks you are talking about now, your own father, Russ Gallagher and others, that you will name as soon as you think of them, you cashed out of this money here (indicating) this money belonging to Mr. Beck or money you were keeping for Mr. Beck?

A. Well, no, I can't definitely say that, sir. No, I have cashed possibly a complete payroll out of there at one time.

Q. You testified now that Mr. Beck gave you this money on—in October of '54. When was the first time you were called upon to use it?

A. I couldn't venture to say, sir.

Q. How is it you remember so specifically October of '54, September of '55 and January of '56 that you got this money, or thereabouts. Why is it you can remember that

and still can't remember the first time you had-

A. Sir, I didn't remember definite dates. I approximated it. I mean, all I would be able to do on this is approximate when I might have gone in there. It might have been the middle of '55 or it might have been sometime [fol. 1842] in '56. I don't recall. If you do it innumerable times you don't recall the first and last times.

Q. Give us the names of the people now, if you will please, who have cashed checks and to the best of your

recollection that you had to use this money for.

A. I mean, that is going to be quite a job to do that.

Q. You cannot do it?

A. I could, with a little time.

Q. All right. Take the time.

A. Well, over the period I cashed one for Dave himself out of there.

Q. Who?

A. Dave Beck himself. I may have cashed one forwell, I am fairly certain I did for B. I. Bowen.

By Mr. Carroll:

- Q. Is he out there now?
- A. Yes.
- Q. Is Russ Gallagher out there now?
- A. Yes sir.

By Mr. Regal:

Q. Right now. B. I. Bowen is out at the union hall right now?

A. That I couldn't say, sir.

By Mr. Carroll:

Q. Go ahead, take your time.

A. Well, we may—as I say, we had to cash a complete payroll of 174 out of there when it was impossible to obtain a signature at one time or another, so that would cover quite a—

Q. What did you say. I didn't hear you?
[fol. 1843] A. I say, we had to cash a complete payroll of 174 out of there.

Q. When was that? That was an extraordinary circumstance wasn't it?

A. Yes sir.

Q. When was it, please !

A. Well, I think that was sometime in '56. It is not an extraordinary circumstance, as I say, it is quite possible that it is impossible to obtain signatures.

Q. Give me some more names. You have given me two

and you have been talking about it for ten minutes.

A. As I say, to pin me down to names-

Q. I am not pinning you down. You said you did it. You have pinned yourself down.

By Mr. Regal:

Q. You said innumerable times.

By Mr. Carroll:

Q. Eight or ten times at least, you said. You said at least eight or ten times. You pinned yourself down.

A. Yes, but to give you the names of the individuals-

Q. You had to take a check from them. They stood right in front of you and handed you a check and you handed them the currency. Didn't it make an impression on you to who it was?

A. When you cash possibly a thousand checks a month

or more

Q. When you got into the vault eight or ten times in a period of three years it is a little different than cashing thousands of checks.

A. There's not too much difference, you have to go quite

often.

[fol. 1844] Q. You said yourself it was unusual, that is the word you used, "unusual". Doesn't an unusual thing impress itself on your mind. Give us the names and I want the names of the people you took the I.O.U.'s from.

A. Mr. Carroll, Mr. Regal said that. Was this an unusual

thing. I said it wasn't unusual.

Q. Give us the names of the persons you took the I.O.U.'s

A. The I.O.U.'s?

Q. Yes, you said you cashed some I.O.U.'s.

A. I would put a I.O.U. in there and cash the check from it. I would put my own I.O.U. in there.

Q. For whom!

A. To cash checks.

Q. For whom? You must have put their name on the LO.U. so you would get it back.

A. I would cash their checks, sir, and then when-

Q. Then when you put your own I.O.U. in there you had to put their name on the I.O.U. so you would know who to get it back from, wouldn't you?

A. No, because I had their check.

Q. What are the names of the persons then if you had

their check, what is the name of the person?

A. Well, I must have cashed—I know I cashed some for George Cavano.

Q. How many?

A. Innumerable.

Q. You also said you cashed some for Dave Beck, Sr. out of that fund.

A. I believe I must have.

[fol. 1845] Q. Didn't he know then—when you took this check in there didn't he wonder where it came from?

A. The odds are he wasn't even present. He probably sent

the check down.

Q. Let's not talk about the odds, but about the facts.

A. He very seldom was present.

Q. Is that your testimony now, he was not present any time when you cashed checks for him.

A. I wouldn't say any time. I would say 99% of the

time he wasn't present when I cashed the check.

Q. How many did you cash for him out of this fund that all of a sudden you both discover?

A. Pardonf

Q. How many checks did you cash for Mr. Dave Beck out of these funds?

A. Oh, three or four, possibly.

Q. How many times was he present, actually, when you cashed the check; actually there?

A. I don't recall he ever was, sir. As I say, he generally would either send the check down or else would call me up

to his office and have me-

Q. Why would he send a check down to you when he had several thousand dollars in cash! He testified as much as \$10,000 in his safe at his own home. Why would he send a check down to you to cash. Maybe you can answer that.

A. I couldn't say, sir.

Q. Do you want to hazard an answer! It isn't because

you are lying, is it?

A. No, sir. I have cashed, many, many checks for Mr. Beck.

[fol. 1846] Q. Mr. Beck would send his personal checks down to you to cash? Mr. Beck sat on that stand and testified he didn't write two checks a year.

A. I said checks made out to him and he would send

them down, endorse them.

- Q. Isn't there a bank right next door to your place of
 - A. Yes.
- Q. But he would send them to you to cash out of some
- A. He wouldn't necessarily know I was cashing them out of that fund. Actually I could have cashed them out of the office generally, but there were some circumstances where I couldn't.
- Q. Mr. Beck testified this morning all his checks were channeled through the B & B Investment Company. That is his testimony this morning, that he never bothered with financial matters, his wife took care of the home and all her expenses and everything else went through the B & B and he wrote maybe two checks a year, he wouldn't even say that many. Is your testimony consistent with that, Mr. Verschueren.
 - A. No.
 - Q. It isn't very consistent, is it?
 - A. I am only telling you what is the truth.
 - Q. You are telling the truth?
 - A. Yes.
 - Q. Are you saying Mr. Beck lied to us this morning?
 - A. No sir, I wouldn't say so.
- Q. One of you must be mistaken then, is that correct? [fol. 1847] When did you talk to Mr. Beck last about your testimony here on the stand?
- A. I have never talked to him about my testimony on the
- Q. Have you talked to him about this money in the vault in the last few days?
 - A. No sir.
- Q. You came in here cold and didn't know what you were going to testify about, is that it?
 - A. I had a fair idea.
- Q. You haven't talked to Mr. Beck, Sr., in the past several days or several weeks?
- A. I have talked with him, but not about the money, no sir.
 - Q. You didn't talk about these envelopes in the safe?
 - A. No sir, only that one time.

Q. It dovetails pretty well with his testimony, doesn't it, fortunately?

A. I don't know, sir.

Q. Would you assume that—so long as you are assuming so many things on the witness stand.

A. Sir, I am not assuming anything.

Q. Has anybody ever been present when you cashed these checks. When you went in there and got the money?

A. I don't know that anyone-

Q. Think about it.

A. No, I don't believe so.

Q. You went in there all by yourself?

A. Yes.

Q. These people brought the checks to you?

A. Yes, sir, generally.

[fol. 1848] Q. And stood there while you went and got the money, did they?

A. Yes sir.

Q. Did they see where you got the money from?

A. I don't know what they did, sir.

Q. Let's have some more names. Gallagher, Bowen, Cavano and Dave Beck, Sr. Who else?

A. Well, as I say the complete payroll, if you want me to

run down-

- Q. You have said that for twenty minutes. Why don't you name names instead of saying the complete payroll. We are going to subpoens them in and ask them about it and you are going to sit here until they come down. Give us their names.
 - A. Nick Matula.
 - Q. Is he in Seattle now?

A. I believe so, yes.

Q. Who else!

A. Floyd Anderson. Vernice Beck.

Q. Any relation to Dave?

A. Not at all.

Q. These people are all available at the Teamsters Hall?

A. Well, I believe so, yes sir.

Q. Do you have some other names you would like to give us?

A. Those are all a portion of the payroll.

Q. These are persons you have cashed checks for?

A. Yes sir.

Q. And taken the money out of the vault and handed them the money, is that correct?

A. Yes sir.

[fol. 1849] Q. You put I.O.U.'s in there?

A. Yes sir.

Q. Wouldn't you have the check to put in there? Why did you put I.O.U.'s?

A. I could have done either.

Q. What would you do with the check if you put the LO.U. in there?

A. Cash the check the next day and put the money back

in there.

Q. Did you keep the check in your own possession?

A. Yes.

Q. And put the I.O.U. in the vault?

A. One way or the other, yes sir. I may have gone in there and taken a flat sum out and brought it into the office so we could cash—so I could cash the checks.

Q. Whose signature generally is missing from the check

that you could get the next day?

A. Oh, Mr. Cavano's.

Q. Are there more than one person signing these checks?

A. Yes, two are required.

Q. Whose would be missing when you cashed them for Cavano?

A. Well, if I cashed them for Cavano, it wasn't his in that

particular instance.

Q. You are leaving me a little bit. I don't get aboard.

A. If I cashed them for George Cavano, it wouldn't be because his signature was missing, but in this other case where he was out of town and it was impossible to get his signature—

Q. Go back to the case where you cashed one for Cavano.

Why did you cash it for Cavano?

[fol. 1850] A. Why? He just come in and wanted his check cashed.

Q. Why wouldn't he go next door! His office is on the first floor isn't it!

A. Yes.

Q. Right next to the door as you go in?

A. Yes, that is correct.

Q. Why wouldn't he go to the bank?

A. I never asked him, sir.

Q. Didn't that seem a little unusual to you?

A. Not at all, it never has.

Q. You aren't in the banking business, are you? There is a bank next door, isn't there?

A. We have always cashed checks for members and offi-

cials and employees.

Q. What was Mr. Cavano's check, what amount?

A. Generally his salary check.

Q. What would that be?

A. Oh, \$170 some odd dollars.

Q. It would be in the \$170 bracket?

A. Something like that.

Q. You tell me you went in and got a certain amount of money out of the vault to pay him. How much was it! You tell me.

A. It would be something along that line. As I say, I may have taken a lump sum out of there one time or other to cash a complete payroll.

Q. You would have persons standing in line to cash

checks while you would go and get this money?

A. No, I mean in preparation for the fact we did not have a signed payroll. I may have gone in there and put [fol. 1851] in a LO.U. or put in a chit and taken the money out and cashed the checks out of it, the payroll checks.

Q. You had to give these individuals a specific amount of

money when you cashed the checks, didn't you?

A. Yes sir.

- Q. How much did you give Mr. Cavano. What would his
 - A. I think it is \$170 some odd dollars.
 - Q. What would Russ Gallagher's be?

A. His is \$100 and some odd.

Q. That isn't close enough. So is mine. So is yours. Let's get close to it.

A. I think it is \$120-something, along that line.

Q. Beg pardon!

A. Wait a minute, it is more than that, about \$120.

Q. About \$120. You have a recollection now as we are here today that you went in and got \$120 out of this fund and gave it to Mr. Gallagher, is that correct?

A. Yes, either that or I already had it in the office.

Q. You understand what you did. You said in the first place you would give Gallagher approximately \$120 when you cashed his check.

A. Somewhere around that, yes sir. The only way for me to definitely determine would be to go back there and check

the amount.

Q. I appreciate that. I could determine that too. We are testing your memory.

A. Yes sir.

Q. And your credibility. What about Mr. Matula. How much would his be?

A. \$200 and some odd. About \$280.

[fol. 1852] Q. \$280. You have a recollection now as you sit here you went in and got \$280 and gave it to Mr. Matula when you cashed his check?

A. Sir, I-

Q. You are having a hard time, aren't you?

A. I am not having a hard time at all.

Q. We are getting down to specifics now, no more generalities. You went in and got money and brought it out and handed a man a certain amount of money. I want to know how much. You had to count it out when you gave it to him, didn't you?

A. Yes sir.

Q. How much did you give Mr. Matula?

A. \$280 somewhere around there.

Q. Give or take what?

A. Well, say \$280.

Q. What about Mr. Floyd Anderson?

A. Oh, \$300.

Q. Do you have a definite recollection now that you went in this vault and got \$300 out of this money and gave it to—

A. Sir, I know I cashed his check, but I can't give you the specific amounts on the checks because I don't definitely—

Q. Are you now saying these amounts you have given heretofore are not accurate?

A. Which amounts are they?

Q. \$120, \$170, \$280.

A. I can't pin it down to specific amounts.

Q. If it turns out you are wrong by \$100 you are just

[fol. 1853] wrong, is that it?

A. Well, sir, when you handle as many bucks as I handle I cannot recall right down to the dollar or the \$10 or possibly \$25 how—

Q. You didn't do this very often, did you!

A. Do what?

Q. Go in the vault and get money out and cash checks!

A. Yes sir. Well, I did it quite often.

Q. Out of these funds?

A. Not definitely out of that fund, no.

Q. How many times did you do it out of these funds!

A. I couldn't-

Q. Didn't I understand you to say approximately eight or ten times, or am I wrong?

A. I guess, thereabouts.

Q. You tell me.

- A. It was around eight of ten, it may have been more.
- Q. Eight or ten times in three years, is that correct?

A. Thereabouts, yes sir.

Q. You approximate it for me. How much time?

A. Yes.

Q. This only happened eight or ten times in three years, is that correct, that you went in this box and cashed checks!

A. Yes sir.

Q. You find it difficult to remember the amounts and particular incidents on only eight or ten times in three years?

A. Yes sir.

Q. These checks you cashed for Dave Beck, Sr. How [fol. 1854] much were they?

A. Oh, varying amounts. Not any of them very high.

Q. How much !

A. Mr. Carroll, I can't remember all those checks.

Q. You are going to be here a long time remembering. You are just starting. When I get through with you Mr. Regal is going to take over again. We don't think you are telling the truth so we are going to stay with you for a while. How much did you cash checks for Dave Beck, Sr. for

A. Well, they would be varying amounts.

Q. You said that. Just start varying, guess at anything you want and I will write it down.

A. Maybe \$50 or \$100.

Q. What are you saying? \$50 or \$100. How many times did you cash checks for Dave Beck, Sr.

A. Over the years, as I say-

Q. Three years we are talking about. Out of this particular fund we are talking about. How many times?

A. Once or twice, possibly.

Q. We are now down to once or twice. How much were they this once or twice?

A. Oh, \$50 or \$100.

Q. Was one \$50 and one \$100?

A. Mr. Carroll-

Q. Mr. Beck is coming down and he is going to tell us and I've got an idea it should coincide closely anyhow.

A. Well, it possibly-well, \$50 or \$100 put those two

down, sir, but I can't pin it down.

[fol. 1855] Q. What is your recollection? As you went to the vault for Dave Beck's check and came back and handed it to him, how much was it you handed him? You handed him the money, didn't you?

A. I probably brought it back up to him, yes sir, but as

I say, I can't give you definite amounts.

Q. I understood you to say a little while ago he sent the checks to you.

A. I said he either sent it down or called me and I went

upstairs and got the check. One or the other.

Q. He was present in the building on both of these occasions?

A. Yes, I believe so.

Q. Is that correct?

A. Yes.

Q. Both times he was there when he gave you the two

A. I believe he was.

Q. How much were the checks now?

A. As I say, one may have been \$50 and one \$100. You

can put that down.

Q. There are no odd numbers here. No cents, 8¢, 12¢, 25¢. All these checks are even numbered. Didn't you ever have one with an odd cents, \$80.50.

A. I would take the even amount out of there and take the balance out of the office petty cash and then replace the proper amount when the time came.

Q. You kept track of that? A. Yes sir, I put a chit in there.

Q. Where are the receipts for the amount you took out of your petty cash fund? Where are those notations? When you took the money out of the petty cash fund how—[fol. 1856] A. I put the check in the petty cash fund and when it came time I would cash the check, reimburse the petty cash fund and put the proper amount in.

Q. These men put you to all that trouble?

A. They always have.

Q. When they could go to the bank next door.

A. They always have.

Q. You should make more money. \$50 or \$100 you say. These were not Dave Beck's personal checks?

A. Not to my recollection, no.

Q. What is your recollection in that respect?

A. Well, I think they were made out to him. He endorsed

them. That is the best I can come up with.

Q. You have no independent recollection of where the checks came from or whether he had endorsed them or whether they were his personal checks. They could have been his personal checks?

A. They could have been. I mean-no, I do not recall,

Mr. Carroll.

Q. What about Vern Beck now. What checks did you cash for him?

A. Vernice.

Q. How many checks did you cash for him?

A. That is a girl, female.

Q. Her.

A. Oh, probably once or twice. As I say when we couldn't get the payroll—

Q. Can she be located?

A. Yes.

Q. Where is she?

A. She is at the Teamsters.

[fol. 1857] Q. How many checks did you cash for her?

A. I think possibly once.

Q. Do you remember the amount?

A. Whatever her payroll is, sir.

Q. Beg pardon!

A. Whatever the amount of her pay check is.

Q. I appreciate that.

A. No, I couldn't—I can't even give you a definite amount on that.

O. You have no recollection what that could be!

A. No.

Q. Was this an unsigned check you cashed for her?

A. As I recall, yes sir.

Q. Were these all unsigned checks you cashed?

A. Not all of them, no.

Q. The question I want to direct to you is, what money did you handle for Mr. Dave Beck? Will you give me your answer?

A. Well, I didn't handle any to any extent. I didn't handle any money for Mr. Beck other—

Q. What money did you handle for Dave Beck!

A. Do you consider cashing checks handling money for him, sir?

Q. That is all right. You can take it that way or you

can take money. Let's confine it to money first.

A. Well, that would be it, cashing of the checks. I mean, if you consider that handling Mr. Beck's funds, why—

Q. What does the word "discretion" mean?

A. Discretion?

Q. Yes. How do you define the word "discretion"?

A. Well, it is-you have me-I will have to-

[fol. 1858] Q. What does "discretion" mean to you?

A. I beg your pardon, discretion is-

Q. Have you heretofore used the word today?

A. Yes.

Q. What does it mean to you?

A. Well, to do something at someone's discretion is to do it at their bidding, I suppose, or at their opinion.

Q. Opinion or what was the other word?

A. Bidding or approval.

Q. Your answer to that question heretofore was, "Well, sir, that is why I want to come back and clarify my prior testimony. It was absolutely beyond my recollection that

he had turned over monies to me to be held until their proper discretion was realized." Proper "opinion" or proper "bidding" was realized. "I still don't know their proper discretion" their proper "bidding" their proper "opinion"?

A. Well, their proper-

Q. Is the word "distribution"

A. Distribution.

Q. Why did you use the word "discretion"?

A. I don't know, sir.

Q. You did all through here. I wondered why you had used it. Is there some reason for it?

A. No sir.

Q. Is it lack of knowledge of the meaning of the word, is that it?

A. That is possible, yes sir.

Q. It isn't that you are confused in the preparation of what you are saying, is it?

[fol. 1859] A. Sir—no sir, it is not.

Q. Would you answer that question for me. What money

did you handle for Mr. Dave Beck?

A. Well, as I say, the only monies I handled for him if you consider cashing checks and returning the money to him, I did handle that for him.

Q. Did Mr. Beck know where you were getting this money

from that you cashed his checks from?

A. No sir.

Q. Well, did he have knowledge that you had money with which to cash checks?

A. With which to cash checks?

Q. Yes sir.

A. Yes sir.

Q. How do you know that?

A. Well, he knew that there was a considerable amount of money that came over the counter into the office and so forth and generally we had sufficient on hand to cash checks. However, there were times when we did not.

Q. There was \$5,000 or \$6,000 in this particular box.

A. Yes sir.

Q. Was there any other money in the vault?

A. At times, yes sir.

Q. At what times?

A. When we didn't have sufficient time to deposit it prior to the bank closing.

Q. Where would that money come from?

A. That would come in from dues and payments and so forth.

Q. That would be a negligible amount because you could bank every day, wouldn't it?

[fol. 1860] A. It would not amount to a great amount.

Q. Several hundred dollars at the most?

A. Yes, generally.

Q. Well, did it occur to anyone up there that there was \$5,000 or \$6,000 in the vault with which to cash checks and no one knew where that money was coming from?

A. I don't believe it was ever questioned.

Q. Wasn't it rather unusual that the head of the organization, the officers of the organization had no knowledge of \$5,000 or \$6,000 floating around in the vault. Every member of the organization you have said cashed checks there, rather large checks, they lined up to do it, several of them a day, several at a time, wouldn't that occur to someone? This is a strange proceeding here, Mr. Verschueren. Here you are with \$5,000 or \$6,000 that doesn't belong to the union that you are cashing checks out of.

A. No sir, it was never questioned.

Q. Wasn't that rather unusual?

· A. No sir.

Q. Where do you think Mr. Beck thought the money was coming from when he sent his checks to you to be cashed?

A. I have no idea what he thought.

Q. Where did Mr. Cavano think his \$200 or \$280 was coming from?

A. Probably from receipts. You see there are times when there is considerable more in the office than \$200 or \$300.

Q. I asked you about that. When are these times?

A. On heavy dues paying periods. The first quarter of [fol. 1861] the month as far as one organization is concerned, the last quarter of the month as far as another organization is concerned.

Q. What organization are you talking about was the heavy one!

A. 174 is the heavy one on the last.

Q. Who collects the dues there?

A. That is collected in the front office and turned in through-

Q. Turned in where!

A. Turned in to our office.

Q. By whom!

- A. By the girls in the front office.
- Q. Do you make the deposits?

A. We make the deposits.

Q. Not "we". Who makes them.

A. One of the girls.

Q. Working under your direction?

A. Yes sir.

Q. Under your control !

A. Yes sir.

Q. You wouldn't leave that money laying around overnight would you, with a bank next door?

A. We would generally put it in the inside vault, yes sir,

and lock it.

Q. And put it in the bank the next day?

A. Yes sir.

Q. How much would that amount to?

A. Oh, it may amount to \$1,000 or \$2,000 or maybe more.

Q. Would you say all these members thought you were [fol. 1862] cashing checks out of the dues that belonged to the members? Is that your testimony?

A. Well, sir, a payroll check is all the same as cash.

Q. I am not arguing with you. I am just asking you. Do you think the members thought these checks you were cashing were coming out of the dues of the members?

A. We were cashing our own members' checks out of the dues. When they came in with a payroll check we would

cash it.

Q. Other individuals you took out of this fund, isn't that

what you have testified to?

A. I may have taken some members out of there too, but I certainly couldn't name them.

Q. I understand. Where do you think Mr. Cavano, Mr. Bowen, Mr. Gallagher, Mr. Anderson and Vernice Beck and Matula thought these hundreds of dollars were coming from when you cashed these checks?

A. I don't think they ever questioned where they were

coming from, sir.

Q. That is not my question to you.

A. Well, I have no idea what they thought.

Q. You were in here on these funds eight or ten different times in a matter of three years at least, cashing checks out of them !

A. Approximately.

Q. Did you ever talk to Mr. Beck about this fund and ask

him what he was going to do with it ultimately?

A. I may have, sir, once or twice. I don't think it was ever-he ever gave me sufficient information for me to know what it was all about.

Q. Let's go back to once or twice. When were those [fol. 1863] occasions you talked to him and told him, "What

do you want me to do with this money?"

A. When were they, sir!

Q. Yes sir.

A. I couldn't give you-

Q. Just approximate it. It went in there in '54, did it, the money in the vault?

A. Approximately.

- Q. Approximately when did you talk to Mr. Beck and my, "Mr. Beck, what about the money you gave me to put in the safe!"
 - A. Possibly sometime in '55.

Q. When in 1551 A. (No response.)

Q. Just approximately!

A. Oh, I don't-June-I mean, you are pinning me down.

It is just a guess on all this, as far as I am concerned.

Q. What was the context of the conversation at that time? Was it in his office and how did you start the conversation?

A. I don't rightfully recall, sir.

Q. You just-

A. All he ever told me was just to hold it there.

Q. I want to know what you told him. Did you go to his office? That was on your mind when you went up there wasn't it. What did you tell him?

A. I couldn't tell you. I don't recall the conversation.

Q. Well, you have testified that once or twice you talked to Mr. Dave Beck about this money that was in the vault. Is that correct? Is that what you testified to? [fol. 1864] A. I believe so.

Q. You just got through saying it less than three minutes

ago.

A. All right.

Q. What did you say to him?

A. I don't rightfully recall what I said, sir.

Q. What did he say?

A. I think all he told me at any time was just to hold it mtil-

Q. What did you say? You went up to talk to him about

this money, did you not, on one or two occasions?

A. Probably asked him-

Q. Not probably, what you did?

A. I don't know, sir. I don't remember exactly what-

Q. Where did the conversation take place?

A. I don't recall.

Q. You went there and went to see Mr. Beck about a particular and definite subject matter.

A. I may have run into him, sir. I don't know what the

occasion was.

Q. Why do you assume you ran into him if you don't knowf

A. I don't think I have seen him too many times over the

last few years.

Q. I am not quarreling with you. I want to find out where you had the conversation on two or three occasions as you testified under oath.

A. I don't recall. I wouldn't say definitely where Thad

the conversation because I don't remember. sir.

Q. Did you go to Mr. Beck with this definite subject matter in your mind of inquiring what he wanted you to do with this particular money?

[fol. 1865] A. I don't know that, sir. As I say, I may

have ran into him. I don't definitely remember.

Q. Would you testify definitely you did talk to Mr. Beck on one or two occasions about this money and ask him what should be done with it?

A. I believe it was mentioned once or twice, yes sir. I

don't remember what the conversation was, however.

Q. Mentioned by whom?

A. Well, by me.

Q. What did you mention to Mr. Beck on these one or two occasions about this money?

A. Sir, I don't remember. I definitely don't remember.

Q. I don't want to put words in your mouth, but did you ask Mr. Beck on one or two occasions during 1955 or 1956, "What shall I do with this money you gave me, that is in the safe or in the vault?"

A. Probably words to that effect. I mean-

Q. You can express yourself pretty well, Mr. Verschueren you have done remarkably well here today. Both of us understand English. Wouldn't it be to that effect. If you had something on your mind you would ask him, wouldn't you!

A. It may not definitely have been on my mind, Mr. Car-

roll. I may have ran into him in the hall.

Q. As a casual remark, "What about that \$5,000 or \$6,000 up in the vault? What do you want me to do with it?"

A. Very possible.

Q. I don't care if it is possible. I want to know what

happened !

A. I don't recall. [fol. 1866] Q. Are you now saying you did not talk to Mr. Beck

A. No, I am not.

Q. What are you saying then?

A. I don't recall exactly what the conversation was or how it came about.

Q. Without recalling the specific conversation, tell the

subject matter, generally, as applied to this money?

A. Something to the effect, as you say, what to do with it

and he said just hold it.

Q. All right, we got that out. You said, "Mr. Beck, what do you want me to do with the money?" And he said, "Just hold it." So Mr. Beck once or twice in '55 or '56 told you to hold this money. You have testified to that. Is that correct!

A. Yes, something along that line, yes.

Q. I don't want something along the line. A. Well, I don't recall the definite conversation, Mr.

Carroll. As I say, I don't remember how it came up or what was said, but-

Q. I wonder if we can find a common ground here some-

where. Do you think we can?

A. I hope so, sir.

Q. Take it all over again. What did Mr. Beck say to you, "Hold the money."

A. Something along that line, "Until we can find out what

to do with it, where it belongs."

Q. What would be along that line now besides hold the

money. It is either hold it or give it to me, isn't it?

A. Yes. All right, he said hold it until we can find what to do with it, something along that line. I don't know. [fol. 1867] Q. What did you testify to? Hold it until we can find out what?

A. Where it belongs or what to do with it, something

along that line.

Q. He knew it was from the sale of some automobiles, didn't hef

A. I said he mentioned automobiles once, that is all I

knew about it.

Q. So he said, "Hold it until we can find out where it belongs."

A. Something along that line, yes sir.

Q. He told you that on two different occasions, is that correct 1

A. As I recall, yes sir.

Q. That is your best memory as you sit there now?

A. Yes sir.

Q. This would be during '55 and '56? A. Yes sir, somewhere along in there.

Q. Would one be in '561

A. I don't rightfully recall, sir.

Q. Would both of them be in 1955?

A. I don't definitely remember, Mr. Carroll.

Q. Just your best recollection?

A. It was two different occasions, I know that.

Q. Did you tell Mr. Beck on these occasions you were taking money out of this money he gave you?

A. No.

- Q. Did you ever tell him you were taking money that belonged to him to cash checks with?
- A. No. [fol. 1868] Q. Why wouldn't you do that? Isn't it unusual to use somebody's money, take an envelope and tear it open? That is his property, isn't it?

A. I don't know, sir.

Q. He gave it to you?

A. Yes.

Q. You have assumed everything here today, could you assume it was his money when he gave it to you to take care of. Did you have any right, title or interest in this money?

A. No sir.

Q. Would you have any right to take money out of his pocket?

A. None whatsoever.

Q. Would you have any right to take money that belonged to him, that he turned over to you in a sealed envelope-

A. As I said, he would not question me.

Q. I asked you as to your right to take it.

A. I didn't take it, sir.

Q. Let's say you used it.

A. Yes sir.

Q. Did you have any right to use that money?

A. (No response.)

Q. Why dwell on your answer? Did you have any right to use my or his money?

A. No.

Q. When did it first occur to you to use somebody's money as if it were your own?

A. I didn't consider I was using the money. I always

replaced it immediately or shortly thereafter.

Q. There might be some question as to the amount in [fol. 1869] there when he first gave it to you and you gave it back to him, inasmuch as it was a sealed envelope.

A. No sir.

Q. That never occurred?

A. No sir, he never questioned me.

Q. You just ripped the envelope open and used the money and never told him you were using it. Does he know to this day you have used that money?

A. I don't know, sir.

Q. You don't know whether to this day he knows that.

A. No I don't, for a fact, no sir.

Q. I thought he gave you a couple of checks to go down and get the money out-

A. To cash for him, not particularly get it out of that

fund.

Q. Where did Mr. Beck think you were getting the moneyf

A. I don't know whether he gave it a thought.

Q. He must have assumed—

A. He may have thought I went to the bank and cashed it as far as that is concerned.

Q. When do they pay the salaries, the 1st or the 15th or

different times?

- A. They vary, it is every two weeks, but it falls on different dates.
- Q. All these persons could be obtaining money at different times?

A. Not if they were on the same payroll, no sir.

Q. Gallagher, Bowen, Matula, are they on the same payrollf

A. Not all of them, no.

Q. Is Gallagher and Bowen on the same payroll?

A. No.

Q. Who among this list of people— [fol. 1870] A. The last.

Q. Vernice Beck.

A. Yes.

Q. Floyd Anderson?

A. Yes.

Q. Nick Matula?

A. Yes sir.

Q. Dave Beck!

A. No sir.

Q. George Cavano?

A. Yes.

Q. B. I. Bowen?

A. No.

- Q. But there is, one, two, three, four, on the same payroll?
- A. Yes. Q. So it is possible that you cashed four checks out of this fund on one day for these four people?

A. Yes sir.

Q. Is that correct?

A. Yes sir.

Q. But they would be different times of the day?

A. Generally, yes. They come in at varying times.

Q. Would you go in four different occasions and take money-

A. No sir, I may have already taken the money.

Q. You would take a handful out, enough to cover whatever the checks might be?

A. No sir, I would count the money out and take sufficient

to cover the payroll.

Q. You say as of this day Mr. Beck does not know that [fol. 1871] you used these funds which he gave you for the purpose of cashing checks and so forth!

A. I don't know whether he knows or not, sir.

Q. You have never told him?

A. Not that I can recall. Not definitely.

Q. You have not discussed the matter of this fund with him in the past-what period of time? Two years ago. A year ago!

A. Oh, probably a year ago.

Q. It has been one year at least since you talked to Mr. Beck, Sr. about this \$5,000 or \$6,000 that is in this box?

A. Uh huh.

Q. Is that right?

A. Approximately that time, sir.

By Mr. Regal:

Q. Mr. Verschueren, when you were gone out to the union hall to get these envelopes and these things we had the record typed of what you testified to before and you came back and we questioned you again. You testified here early this afternoon that you had received two envelopes from Mr. Beck, one in '54 and one in '55 and then in '56 he gave you some money, or he put some money into one of the envelopes. When you got back this afternoon you changed that and said he put the money in the envelope the second time and the third time gave you another envelope. Which is accurate, sir. If you know.

A. Well, I may have been confused the last time. Q. Try to get the accurate story then, if you will.

[fol. 1872] A. I believe it was the first. He put it in the second envelope the third time.

Q. The third time he put it in the second envelope.

A. Yes.

Q. In other words then this afternoon when you got back from the union hall and said definitely that there was one envelope and then he took that one envelope the second time and put money into it and the third time gave you another envelope, that was not accurate. Your first story this afternoon was an accurate story?

A. Sir, to the best of my recollection, yes. That is sometime ago so I definitely don't recall when everything took

place.

Q. Mr. Beck giving you an envelope filled with \$3,000, \$4,000 or \$5,000 of cash is not standard procedure, it is not

something that happened every day, is it?

A. Not every day, no, but it was not unusual. He would give me envelopes with cash in them and I would hold them until he—

Q. He asked for them?

A. Yes sir.

Q. How many times has he done that in the last three years?

A. Oh, in the last three years, I don't think over three

or four times.

Q. In those three or four times are these two envelopes included?

A. No, no.

Q. Three or four times besides these two?

A. Yes.

Q. Where did you put those three or four he gave you? [fol. 1873] A. I put those right in the inner vault.

Q. You didn't put them in this little box in the time vault?

A. No.

Q. Why not's

A. Well, because he had told me to set it aside, let's say. This other was his, I presume was his money.

Q. He told you to set this aside. You never testified to

that before.

A. He said to put it away and hold it.

Q. He told you to put the others—A. Put these away and hold them.

Q. What did he tell you about the other envelopes he

put cash in?

A. He just said, put this down there for me or words to that effect. When he wanted it he would call me and I would bring—

Q. He didn't say hold it, just put it down there.

A. Not definitely, he might have.

Q. What was your understanding?

A. Well, those envelopes would have his name on the outside of them, so I would know—

Q. And this one (indicating) of course doesn't.

A. Well, no.

Q. He gave you that and he told you to hold it for him.

A. Not for him, just hold it until what I have-

Q. He gave you this one (indicating) and told you to hold it?

A. Yes sir.

Q. This one that had "stamps" on it.

A. That may not be the original envelope.

[fol. 1874] Q. How did it get the word "stamps" on it?

A. I don't know.

Q. Nobody else had a key?

A. No sir.

Q. Would he take an old envelope lying around and put the money into it, sir?

A. Possibly, sir.

Q. Your story is now, you got one envelope in '54, the latter part, one in '55 and then in '56 he put some money into the first envelope or the second one, is that right?

A. I believe that is how it occurred, yes sir.

Q. That is how it occurred. You say you have received other envelopes from him and they were kept in a different part and different vault?

A. Well, the same vault, different compartment.

Q. Not in the time vault?

A. In the time vault.

Q. But not in that drawer.

A. Not in that drawer.

- Q. You testified before this afternoon, before you went out to the union hall, that you gave all of those envelopes back.
 - A. Yes.
 - Q. That he asked for them and you gave them back?
 - A. Yes.
- Q. Mr. Devin asked you if you had paid any of this money and you said no sir and you must have said it emphatically because the reporter has "no sir" in capital letters. Mr. Devin asked you if you had ever done anything with the [fol. 1875] monies in the other envelopes and you said no sir and he asked you if you ever paid them to anyone and you said no sir. Then you come back from the union hall after we asked you to bring the money down here and concoct this fallacious story about cashing checks. Are you telling the truth now or were you telling the truth when you told Mr. Devin this money was never used for any purpose at any time?

A. Just a moment, Mr. Regal-

Q. I am asking you a question. When were you telling the truth?

A. Re-state those questions.

Q. I told you what you told Mr. Devin today when you testified before, before you were asked to bring this money down here, that you never had used it, never had taken any money out of this (indicating). This (indicating) was untouched and then you testified when you came back with the money, knowing that it can be checked, that you had used it for checks. Your story is very clear. We know exactly what you are trying to do and no person in this room believes you. You understand that, don't you. And you understand you are standing very close to a perjury

charge, if not aiding and abetting grand larceny. If you want to go down the drain with the other people that are going to be involved in this, you make your choice now. If you want to tell the truth now, you can do so and you will not be charged. Do you understand? That is your opportunity. Do you want to think about it a minute? Do you want to think about it a minute?

[fol. 1876] A. Please re-state that question.

Q. I am telling you what the question was. You were asked whether this money was ever used by anyone and you said "no sir".

A. I was asked whether Mr. Beck's money was ever used.

Q. Yes, this money here (indicating) was ever used. You said Mr. Beck got the other envelopes back.

A. Then Mr. Devin said was any of that money ever used

and I said no sir.

Q. Never used and never touched.

A. It is not this money, Mr. Regal.

Q. Just a minute, we were talking about this money. You were talking about the number of times you unsealed the envelope and it was unsealed when Mr. Beck came down to put more money in it, that was the only time it was unsealed, when you talked to Mr. Devin.

A. That is not the way the testimony reads, Mr. Regal.

Q. That is the way it reads.

A. It is not.

Q. Tell us what the true story is.

A. As I tell it to you right now, and on there.

Q. You said this money was never used.

A. I said Mr. Beck's money was never used, sir.

Q. You did not. Tell us what the true story is.

A. The true story as I have told it to you.

Q. Well, just listen to this: "Well, if this has happened a number of times then you haven't held any of the other envelopes, he has picked them up." That means the envelopes he has picked up. "Yes. Have you ever done anything with the monies in the other envelopes you have [fol. 1877] held?" Meaning these two (indicating) "No sir." Now, explain that if you will. You gave all these other envelopes back. Now these two are the other envelopes you have reference to. Did you do anything with this

money. You see that question was asked because I walked over to Mr. Devin, I knew these bills could be checked, and I asked Mr. Devin to check into that. We know that when Mr. Beck carries \$3,000, \$4,000, \$5,000, \$6,000, \$7,000, \$8,000, \$9,000 or \$10,000 in his pocket, we know he carries new bills, he doesn't carry a bunch of dirty money around. He carries new bills, he gave you new bills when he put them in this envelope, if he did, and there are no new bills in here, I wager and I haven't looked at them. When you get your money from the bank to pay your employees you get new money because money only lasts a few days in commerce, and you should know it, or you probably thought of it on the way out there. When you said you never used this money, were you lying at that time?

A. No sir, I made a mistaken answer.

Q. You made a mistaken-

A. Just a minute-

Q. You've made them all day, haven't you!

A. Never used for any purpose, didn't I say that?

Q. You said you never used it.

A. I don't consider cashing checks using it.

Q. You testified you opened those envelopes two or three times only. Now, you tell us you cashed eight or nine or ten checks out-of them so you must have opened them.

A. I could take a lump sum out and bring it into the office

[fol. 1878] and cash checks and return it.

- Q. You could do anything. You could fly if you had wings, but you'll never get wings at this rate, I don't think. Now, do you want to change your story, do you want to tell the-truth?
 - A. I have told the truth.
- Q. You are going to stick to it. You have got your story and you are stuck with it, is that right?

A. No sir.

Q. What is the truth now? Let's go back here just a moment. You did not tell the truth when you say you didn't touch the monies in these envelopes, is that correct? You were not telling the truth then or you are mistaken?

A. Just a moment, I was asked if the money was ever-

used and as I say, if cashing a check-

• Q. You were asked if the money was ever touched, not used, ever touched and you said no. No sir, is what you said, then you were asked about sealing these envelopes and you unsealed it once, you counted it once. How did you happen—

A. I didn't say-

Q. How do you know there is \$5,000 or \$6,000 in there? There may be \$10,000 or \$12,000.

A. The only way I know is by glancing at it and, as I say, by taking a certain amount out of it now and then.

Q. There are 5's, 10's and 20's and 100's in there and without counting it you could determine there is \$5,000 or \$6,000, just by looking at it. How do you know there is \$5,000 or \$6,000, or do you happen to know \$5,000 or \$6,000 [fol. 1879] represents the amount of money involved in these car transactions?

A. No sir.

Q. You don't know that?

A. I have no idea what that represents.

Q. You were asked the other day whether there were any record in the books regarding these cars?

A. Yes sir.

Q. This car in '53, what was the figure there. Do you recall what that was, or do you have a lapse of memory again? Do you recall the figure of \$2800, sir?

A. No, I do not.

Q. Do you recall the figure \$1850?

A. That I do.

Q. Do you recall the figure \$1900?

A. I wasn't questioned-

Q. You were questioned only about the \$1850 figure, were you not? You were questioned on the Joint Council books. Isn't that right?

A. Yes sir.

Q. And you checked those books?

A. Yes sir.

- Q. You knew we were interested at that time in finding out whether or not an automobile was sold at that time and whether or not those books would reflect a sale of an eutomobile at that time?
 - A. Yes sir.

Q. That was in September or October of '54, isn't that right?

A. Yes sir.

[fol. 1880] Q. We told you the date, didn't we? And we asked you to check the records of the books you brought in here, isn't that right?

A. I don't recall you told me at the time.

Q. We didn't tell you the date?

A. Not to my knowledge.

Q. You checked all the books?

A. For three years, yes sir.

Q. To see whether or not those books reflected the sale of an automobile for \$1850 of the Joint Council, didn't we?

A. Yes sir.

Q. You checked those books and you knew what we had reference to and still you had this money in your possession and you tell us now when you come in here today that you received money from Mr. Beck regarding the sale of automobiles and you didn't recall it at that time.

A. No sir, I did not.

Q. You had occasion to talk to Mr. Beck—or you had an opportunity to, and I will wager that you did—but until he knew what the facts were it was impossible for you to concoct a story, isn't that true?

A. No sir, that is not true.

Q. Who is your attorney, Mr. Verschueren?

A. Mr. McGovern has been acting-

Q. Mr. McGovern is your attorney. Have you talked to Mr. Burdell or Mr. Wesselhoeft at any time regarding your testimony here?

A. Yes.

[fol. 1881] Q. Have you attended a meeting where Mr. Burdell and Mr. Wesselhoeft were?

A. No.

Q. Have you been in the presence of Mr. Beck at the time you talked to Burdell and Wesselhoeft?

A. No, I didn't talk with them, no sir.

Q. You didn't talk with whom?

A. With Mr. Burdell and Mr. Wesselhoeft.

Q. You said you did the first time I asked the question.

A. I said I had talked with Mr. Wesselhoeft, sir.

- Q. Did you talk to Mr. Wesselhoeft in Mr. Beck's presence?
 - A. Did I talk to Mr. Wesselhoeft in Mr. Beck's presence?
 - Q. Yes.
 - A. No sir.
 - Q. Who was there?
 - A. Mr. Wesselhoeft and myself.
 - Q. Where was that conversation?
 - A. That was at the Teamsters.
 - Q. When?
- A. Oh, a couple of weeks ago. About a week and a half or two weeks ago.
- Q. Right after you testified here or a week after you testified here?
 - A. It was sometime after I testified here.
 - Q. Had you talked to him before that time?
 - A. No sir.
 - Q. Who else have you talked to after you testified here?
 - A. I talked with Mr. McGovern.
 - Q. Your own attorney?
 - A. Yes.
- [fol. 1882] Q. Did you tell Mr. Wesselhoeft what you testified to here?
 - A. No sir.
- Q. You did not. You were talking to an attorney regarding what? What was your conversation with Mr. Wesselhoeft?
 - A. It was regarding Mr. Beck.
 - Q. What was the conversation?
 - A. It was regarding these monies in the vault.
 - Q. What did you say to Mr. Wesselhoeft?
 - A. I just told him they were there, sir.
 - Q. What did he say!
- A. He said that is all he wanted to know, or words to that effect.
 - Q. Did he call you or you call on him?
 - A. He called me.
- Q. Did he ask you whether or not those monies were there?
 - A. Yes.
 - Q. What did you tell him?

A. I said they were.

Q. Did he ask you whether or not you had counted the money?

A. I don't know. No, I don't believe he did.

Q. I didn't hear you?

A. I don't believe he did, to the best of my recollection."
He may have, however.

Q. When you talked to Beck did he ask you how much

was in the box?

A. No sir.

Q. Did he ask you to count it?

A. No sir.

Q. How much money is in here, do you know?

A. I said, roughly, \$5,000 or \$6,000.

[fol. 1883] Q. You have never counted it?

A. No sir.

Q. This conversation with Mr. Wesselhoeft, that took place at the union hall?

A. Yes sir.

Q. Did he come over there!

A. Yes sir.

Q. Do you remember what day it was?

A. No, I don't sir.

Q. Did you call Mr,—what was the name of your at-

A. McGovern.

Q. Did you call McGovern after you talked to Mr. Wesselhoeft?

A. Yes.

Q. How soon after you talked to Wesselhoeft did you call Mr. McGovern?

A. Oh, not for-oh, anywhere from five days to a week.

Q. Why did you wait that long?

A. Why did I wait that long!

Q. Yes. Didn't you call McGovern and see what you

should do regarding this business here!

A. Yes, I wanted to know whether I should make an affidavit or appear again and therefore I—well, Mr. Mc-Govern was not definitely representing me at that time. I had no attorney, so I decided to call him.

Q. Now, you say that you talked to Mr. Beck the day after or the same day you testified here, is that right?

- A. Yes.
- Q. And he asked you at that time whether or not you [fol. 1884] still had the money that he had given you in the vault, in the envelopes?
 - A. Yes sir.
 - Q. Did he refer to envelope or envelopes, do you recall?
 - A. No, I don't.
- Q. This conversation was only a few weeks ago. Sit there and think just a minute. Let's get the conversation with Mr. Beck. Was it a telephone call?
 - A. No, it was-
 - Q. In person meeting?
 - A. Yes sir.
 - Q. Where did it take place?
 - A. I ran into him on the street.
 - Q. Near the union hall?
 - A. Yes.
- Q. Where was he? Was he coming or were you coming into the union hall at the time?
 - A. I don't think I was.
 - Q. Where were you going at the time?
 - A. I think I was coming-
 - Q. Back from here!
- A. No, I had been back there. I was over in the gas station for some reason to check on my car and he was just pulling out.
 - Q. What gas station?
 - A. Right across the street.
 - Q. What is the name!
 - A. Standard Service Tire.
- Q. You were over there after you had testified here. You had gone back to the union hall to your office and [fol. 1885] you were over there at that time?
 - A. Yes.
 - Q. What time of the day was that?
 - A. Oh, 4:30 I think, or thereabouts.
- Q. He was pulling out from the gas station. Does he park there!
 - A. Yes sir.
 - Q. He was pulling out from there?
 - A. Yes sir.

Q. Who was with him?

A. I don't know. I think he was alone when he left, I am not sure.

Q. Driving his own car?

A. Yes.

Q. Did he call you over to his car?

A. Yes, I believe so.

Q. Now, you testified previously that you met him on the street. By that you mean he called you over to his car. You didn't meet him on the street.

A. Well, yes, the same difference. I met him in the

gas station.

Q. But he was leaving the gas station and he called you over and you walked over. Did you get into his car?

A. No.

Q. You did not get into his carf

A. No.

Q. You are sure of that?

A. Yes, I am sure.

Q. Positive?

A. Yes.

[fol. 1886] Q. You didn't get in the back seat or the front seat, you stood at the side of the window?

A. Stood at the side of the car.

Q. He was in the driver's seat?

A. No, this was before he had gotten in the car, he

Q. Standing beside the car?

A. Yes.

Q. So you walked over to him while he stood beside the car. What did he say?

A. All he asked me was if I still had this money in the

deal in the vault.

Q. Did he say in the envelope or envelopes or anything?

A. He just asked me about the money, whether he mentioned envelopes or not, I don't know.

Q. Tell us what his conversation was to the best of your recollection, word for word. What did he call you by name, Fred?

A. Fred.

Q. Tell us what he said.

- A. He said, "Fred, is that money that I—still down in the vault?" And I said yes.
 - Q. You knew exactly what he had reference to?
 - A. Yes sir.
- Q. You had just left here after testifying and after examining the books regarding automobile transactions and we were trying to find out whether or not any money was ever received from anybody to you for the purpose of paying for cars that were sold and you checked the books very carefully and you left here and went back to your office and then left your office soon thereafter and walked out and he called you and said, "Fred, is that money still [fol. 1887] down there for those automobiles?" And you said, "Yes sir." Just like that.
 - A. I was very amazed.
 - Q. Just like a thunderbolt. Did you show shock?
 - A. Yes sir.
- Q. Yes sir, by golly I remember (indicating). Did you tell him you had forgotten about it when you testified?
 - A. No sir.
- Q. You didn't. Did you call Wesselhoeft and tell him you had forgotten?
 - A. No, but he may have.
- Q. How did Mr. Beck know you didn't testify about it? He must have known otherwise he wouldn't have had Wesselhoeft come out.
 - A. Possibly from my expression.
 - Q. Because of your shock, the expression on your face?
 - A. Yes sir,
- Q. But you didn't say anything to him about it at that time?
 - A. No.
- Q. He didn't say, "What's the matter, Fred, got a pain?" Or did he?
 - A. No.
- Q. He didn't. But from your expression he later thought about it possibly and then he told his attorney, "From Fred's expression I think maybe we are in trouble." Do you think he might have said that to his attorney?
 - A. I have no idea.

Q. Then his attorney came out to you and he had this conversation with you a week and a half afterward and [fol. 1888] you say there were no conversations in between with Mr. Beck or with Mr. Wesselhoeft or with Mr. Burdell or with you own attorney. Is that correct and true?

A. It was sometime during that time, I mean, that length

of time. I am not certain as to-

Q. I am not talking about the conversation with Mr. Wesselhoeft, I am talking about the day you met Mr. Beck out there when he was leaving and you told him that the money was still there and his question and showing this great surprise on your face and saying nothing more about it and the conversation you had with Mr. Wesselhoeft approximately a week and a half after that. Did you have any conversation in between?

A. No sir.

Q. With anyone regarding this matter?

A. No sir.

Q. Did you notify Mr. Beck or anyone that you had not been able to find this item down there and that you had testified that there was no indication on the books, or any other way, of any receipts of money for this automobile, this \$1850.

A. Would you phrase that again, please.

Q. You testified down here that you could find, and you knew of no receipts of money for the sale of this automobile in the latter part of 1954. It was actually October of 1954, and we told you the date at the time you testified when you checked the books. You come in later and tell us you remember in the latter part of '54 that Mr. Beck had given you this money. Now, when you went out there [fol. 1889] you had just testified that you had not found anything in the books and you knew of no money coming in. Do you follow me?

A. I follow you sir. As I say-

Q. Mr. Beck asked you this question at that time of whether or not you still had the money and then you showed the surprise, is that correct? I mean, you were actually shocked.

A. Yes sir.

Q. Were you worried and disturbed?

A. Somewhat, yes sir.

Q. Why didn't you tell Mr. Beck about what had happened then f

A. Why didn't I?

Q. Yes.

A. I didn't.

Q. Didn't you think it was your duty to help your boss if he was innocent of anything and you had some evidence that was necessary and relevant to this matter? Didn't you think that was important?

A. It was important, definitely.

Q. Why didn't you call your attorney or Mr. Devin or Mr. Carroll or somebody else and tell us what it was or were you trying to withhold evidence?

A. No sir, I was not.

Q. You were trying to be truthful with us?

A. Yes.

Q. Why didn't you contact someone?

A. I did contact my attorney. As I say he was arranging for me to come back and volunteer-[fol. 1890] Q. I know you contact your attorney a week or so after you talked to Wesselhoeft.

A. As I say, I didn't have an attorney.

Q. I know you didn't have an attorney. When you had an attorney, when you finally hired one, it was a week after you had talked to Wesselhoeft. How did Wesselhoeft find out that you had testified in the manner that you did?

A. I couldn't tell you sir.

Q. You think it was because of the shock on your face Mr. Beck suspected something?

A. I have no idea, sir.

Q. Now, you tell us that Mr. Wesselhoeft came out to talk to you and that occurred in your office at the union hall at 552 Denny Way, is that the address?

A. Yes sir.

Q. What time of day was it?

A. It was in the morning, I believe.

Q. Who was there in the office at the time!

A. I was alone, sir.

Q. What did Mr. Wesselhoeft say when he came in? Does he know you? Has he met you before?

A. I had met him on one occasion.

Q. What did he say when he came in the room. Adjust your mind to the conversation. Tell us what happened? What transpired?

A. He just asked me-

Q. Did he ask who you were or introduce himself or what?

A. No, as I said, we had met at a prior time.

Q. How did he address you, Mr. Verschueren or Fred? [fol. 1891] A. Fred.

Q. What did he say?

- A. He just asked me to show him where these particular sums had been kept and I showed him and that was the end of it.
- Q. Did he ask you whether or not you had testified regarding these sums?

A. Asked whether I had testified regarding them?

Q. Yes.

A. He may have.

Q. It seems very important if you had a big shock on your face you would certainly be interested in that aspect. You knew you should have testified when you were here before. You told us that apparently you worried for three weeks. Did he ask you at the time whether you had testified or did you tell him?

A. I think something came up concerning—he asked me if this had been brought up or if I had mentioned it. I think I said no, I had forgotten about it completely.

Q. You told us before all he asked you was whether or not the funds were still there and you said yes. Now, all of a sudden, because it seems logical, I guess, you remember the conversation. Now, let's be a little more logical about it. Did you tell him what they asked you down here?

A. No sir.

Q. You didn't offer to tell him what we had talked about down here?

A. No sir.

Q. Did you talk about testifying further in this matter [fol. 1892] and offering yourself for further testimony at that time?

A. Yes sir-well, not at that time.

Q. You said that is the only time you talked to Wesselhoeft. If you didn't talk at that time when did you talk to him?

A. He called by phone and that is after I talked to my attorney. I told him to contact—

Q. First you testified you talked to Wesselhoeft once?

That is not correct?

A. Once by phone.

Q. When I ask you a question in the future about a conversation I mean by any means whatsoever where your voice is conveyed and his voice is conveyed to one another, you see.

A. Uh huh.

(Recess taken.)

FRED VERSCHUEREN, JR. resumed the witness stand.

By Mr. Regal:

Q. Mr. Verschueren, you are still under oath. I am going to open in your presence this Exhibit 76 which is the envelope you received in September of the latter part of '55 as you testified. This is the envelope that you received at that time and this is not the envelope you gave Mr. Beck when he asked for it to put the additional money in. This is the envelope that was given to you in the latter part of '55 and the same amount of money should be in here as was in there at that time, is that correct!

A. Well, no sir, not necessarily.

Q. Tell us why it isn't correct?

[fol. 1893] A. Some may be in the other envelope or some

out of the other envelope may be in there.

Q. When he gave you this envelope with this writing on it, referring to Exhibit 77, that says Western Conference or J.C. and then later he gave you this other envelope in '55 or around September, he told you that he—to keep

both of them and you could change the money back and forth, it didn't make any difference?

A. Yes, just said keep it with the other.

Q. Keep it with the other.

A. Words to that effect.

Q. He said it didn't make any difference, it all goes to the same place?

A. Nothing along that line was said.

Q. What did he say to make it clear to you you could intermingle the funds?

A. Nothing one way or the other.

Q. Why were the envelopes kept separate? Why didn't you put it all in one envelope? Wouldn't that have been easier?

A. Possibly, it would be quite full, however.

Q. So when you took money out of this envelope, Exhibit 76, you might have put the money back in Exhibit 77?

A. Possible.

Q. In other words, when you take 76 and take money out of it to cash a check, you would put an I.O.U. in 76, is that right?

A. I just put a I.O.U. in the box, or possibly put it in

the envelope.

Q. Wouldn't you put it in the envelope or the box!

A. The odds, are I might put it in the envelope or in the box.

[fol. 1894] Q. You don't recall what you did?

A. I did both.

Q. How many checks did you say you cashed out of this?

A. Innumerable checks.

Q. By innumerable do you mean 1,000, 100, 501

A. In the hundreds, I imagine.

Q. In the hundreds. You cashed hundreds of checks out of this money, hundreds of times. The money you had in the office for the purpose of cashing checks and servicing and helping your members and your officials and so on has been so low you had to use this money that Mr. Beck gave you to keep—

A. You say hundreds of times?

Q. Hundreds of times that happened.

A. No, I say I cashed hundreds of checks. It wouldn't necessarily be hundreds of different times. I may take a lump sum out of there and cash innumerable checks.

Q. I will take this envelope, this is the second envelope

you received?

A. I believe-yes.

Q. In September of 1955, or the latter part of 1955, is that right?

Mr. Lawrence: What exhibit number!

Mr. Regal: 76.

Q. Exhibit 76, I intend to refer to it a number of times before I even open 76. Do you see that?

A. Yes.

- Q. It is still in its sealed condition. It has not been tampered with.

 [fol. 1895] A. Yes.
- Q. You have been in the room all the time, except when you went out for the recess.

A. Yes.

Q. It is still in the same condition as when you brought it in here?

A. Yes.

Q. I will open it here by cutting the end. (Opens exhibit)
This says "stamps" on the outside and inside the envelope
is one airmail stamp?

A. Yes sir.

Q. United States Postage, uncancelled. Put that back in the envelope. You come down off the stand with me, please, Mr. Verschueren, and off the record we will count it.

(Witness and Mr. Regal count money contained in envelope.)

Q. May the record show there is \$2,000 in \$100 bills. Did you count them when I counted them?

A. Yes.

Q. Is that accurate?

A. Yes.

Q. We have \$1,000 in \$50 Bills and \$100 in \$20 bills. So altogether we have \$3,100 in Exhibit 76, is that right?

A. (No response.)

Q. Count that again and make sure we have \$3,100.

A. That is correct.

Q. Do you find \$3,100?

A. Yes.

[fol. 1896] By Mr. Carroll:

. Q. Do you know whether or not any of this money is the original money Mr. Beck gave you?

A. No, I would have no way of knowing.

Q. Is it possible there's been a complete turn-over in this money?

A. It is possible, yes.

By Mr. Regal:

Q. Mr. Verschueren, would you count this money and make sure there is \$3,100 and then put it in your pocket. We are going to keep the envelope as Exhibit 76. Exhibit 76 now constitutes solely an envelope and no money. Go ahead and count it. Is it all there?

A. Just a moment. This is somewhat out of order and it takes a little longer. (Witness counts money) Yes sir.

Q. It is all there!

A. Yes sir.

Q. Put it in your pocket now. Now, with reference to Exhibit 77. This is the first envelope that Mr. Beck gave you in October or thereabouts, the latter part of 1954 and this is the envelope that you brought to him and he inserted additional money in, is that correct?

A. Yes.

Q. I am opening the end of that envelope, Exhibit 77. Exhibit 77 is materially in the same condition you brought it down in?

A. Yes sir.

Q. I will open the end by cutting the end with a knife. If you will come off the stand we will count this. Inside the exhibit is a slip. When was this piece of paper put [fol. 1897] in Exhibit 77?

A. I think it's been in there all along.

Mr. Carroll: I couldn't hear.

The Witness: I believe it's been in there all along.

Q. Is that your testimony?

A. Yes.

Q. That was put in there then in October of 1954 or

whenever this envelope was given to you?

A. Well, no, I don't know that. It may have been put in when he put the other money in there. I am wrong in saying its been in there.

Q. Have you ever seen that piece of paper before?

A. I glanced at it, yes sir.

Q. Did you read what was on it?

A. To an extent, yes.

Q. Did you look at it the other day when you were asked to check the money to see if it was all there?

A. No, I didn't. I didn't read it.

Q. You didn't open the envelope the other day?

A. I opened it, yes.

Q. The money was wrapped in that piece of paper, wasn't it, inside this envelope?

A. The money was inside of it.

Q. It was inside—in other words, the paper was around the money each time you took money out of this exhibit 77 and you had to unwrap it, take that paper off didn't you?

A. No. No cir, I don't recall that I did.

Q. What was the position of that thing. Come back down [fol. 1898] here. Was this the position of that paper in the envelope when I opened it (indicating)?

A. I won't say whether it was that way or the other way.

I would presume it would be the other way.

Q. You would presume? A. Yes, wouldn't you?

Q. I wouldn't know. My recollection is that I put it back the same way it came out.

A. That would be the hard way to put it in the envelope, I would say, with this (indicating) being the top.

Q. You think it was in this way (indicating)?

Mr. Carroll: The record does not indicate which way you say is this way and which way is that way.

Q. Mr. Verschueren, it is your recollection the money was in the envelope inside the paper with the edges of the

paper up, that is, on the upper part of the envelope where it is sealed?

By Mr. Carroll:

Q. You put the money in the position you say it was.

A. Well, this way (indicating). I don't know, I didn't pay that much attention to it. I would presume that would be the way it would be in there (indicating).

Q. The paper is around the money?

A. Yes.

By Mr. Regal:

Q. Did you take the envelope and hold it open and count the money or take all of the money out of the envelope each time when you needed \$200 or \$300?

A. I would take a portion out and count it.

[fol. 1899] Q. And put the rest back?

A. Yes.

Q. You always did it that way?

A. Yes, I would only take what I needed.

Q. If you happened to need \$70 you would take a bunch of it out and then pay it out and then when you got it back you would shove it back in, you wouldn't take all the money out and lay it in here a certain way!

A. You don't have to do that. You can categorize it in this fashion (indicating) without taking the money out. I

generally do.

Q. The bills are lying with the dark part up, not the green, all exactly the same way, are they not? With the 20's on top, the 50's next and then lastly there are two \$500 bills, is that right?

A. Yes.

Q. They are all lying in that fashion. You would do that in the envelope without taking all this money out each time?

A. Yes, that is very easy to do, yes sir.

Q. I know it may be easy, but that is what you would do. You wouldn't take it out and handle it properly, count what you wanted and take it out and put the rest back.

A. No, just generally take a portion and put it back.

Q. So you wouldn't be able to read this paper every time or see it, is that right? This piece of yellow paper?

A. I only recall reading that once. That was a long while

ago.

Q. How long ago was that?

[fol. 1900] A. It was a good period of time, sir. You are

pinning me down to dates again, now.

Q. You testified, previously, Mr. Verschueren, you had no knowledge of what this money was from. You were told originally by Mr. Beck to hold it for him and he said something to you about automobiles.

A. Yes.

Q. You said you read this paper at one time?

A. Now that you bring it to my attention, I did read it.

Q. You didn't show great surprise as you did when you were talking to Mr. Beck out in the parking lot all of a sudden and something new occurred. You apparently didn't open these envelopes and check in them.

A. I most certainly did.

Q. Who prepared these? Did Mr. Beck prepare them and give them to you?

A. Originally, yes sir.

Q. When, a day or two days ago!

A. No sir.

Q. A week ago.

A. No sir.

Q. When?

A. Sometime ago, years ago.

Q. Now, this Exhibit 79 says: "Money from car sales". Apparently this is instructions to you, isn't it? He gave you a whole batch of money here—by the way, keep your eyes on it all the time, I've got my hands above the table-"Check amount, if any, owed to Western Conference or International to apply new purchases. D. B." Do you know Dave Beck's writing when you see it?

[fol. 1901] A. Yes sir.

Q. Is this Dave Beck's writing?

A. Yes sir, it looks like it.

Q. It looks like he wrote with a thick pencil. Does he always write with a thick pencil, do you know?

A. I believe he does, yes.

Q. It looks similar to this (indicating) only this one isn't smeared because it's been in the envelope, but it looks like the same kind of writing as on this Exhibit 77, except this is smeared, this artistic smearing has been done.

A. Yes sir.

Q. Will you come down here and we will count the money we have taken out of Exhibit 77.

A. (Witness and Mr. Regal count money.)

Q. \$3,500 is that right?

A. Yes sir.

Q. Will you pick it up now and count it as you go through it again. There is \$1,500 in \$50 bills; two \$500 bills and the rest is all \$20's. Get back on the stand if you will and take this money up there, except for the \$500 bills. We will keep two of those here, primarily because I haven't seen one before. Now, these checks that you have cashed all have been for employees out of this money?

A. Yes.

Q. Have you ever cashed a check in excess of \$5001

A. I have many times, yes, whether out of this money or not, I couldn't definitely say.

Q. Do you recall cashing a check in excess of \$500 out

[fol. 1902] of this money?

A. I may have, if I happened to have some of this money

in the office, yes sir.

- Q. What employees in the union make over \$1,000—make \$1,200, they would have to make \$1200 to get \$500 every two weeks.
- A. There are none within the union. We do have some members, I believe, that make that, over-the-road drivers.

Q. What members are they?

A. I believe there are some over-the-road drivers and so forth that make quite a good amount of money.

Q. They come in to the union hall, rather than go to the

bank, and cash checks for amounts in excess of-

- A. Well, we have expense checks too at times that amount to more than \$500 if they have run for a considerable period of time.
- Q. So then you couldn't testify that these two \$500 bills are two of the original \$500 bills that were in there?

A. No sir.

Q. You don't recall at some time or another taking a \$500 bill out and giving-

A. I may have taken other money.

Q. Not what you may have done. I am asking you whether or not you recall doing it, paying \$500 over to somebody. It isn't an ordinary every day event to a person even in a banker's window.

A. No, that is very true. Q. Sure it is very true.

A. Just a moment, I may have used money of different denominations and put those bills back. That is possible. [fol. 1903] Q. You might have cashed a whole lot of checks and this might be put back by you?

A. Yes sir.

Q. You got all the money except the two \$500 bills?

A. Yes.

Mr. Carroll: Read the serial numbers in the record.

Q. You read the serial numbers of the \$500 bills.

A. L-00119052-A.

Q. It's got number twelve in each corner.

A. Yes.

Q. Showing the 12th Federal Reserve District.

A. Yes.

Q. Read the number on the other one, if you will.

A. L-0021916-A.

Q. Also twelve, showing it is the 12th Federal Reserve District.

A. Yes sir.

By Mr. Carroll:

Q. What is the source of those two \$500 bills?

A. The source, sir!

Q. Yes.

A. Well, how do you mean that?

Q. Where did they come from? How do they come to be

in this envelope?

A. As I say, they might be the original ones put in there by Mr. Beck, I may have put them in myself, if I have taken out a considerable amount of money to cash checks and put these back in again.

Q. Is it your recollection you have put a \$500 bill in

[fol. 1904] there?

A. I don't think I would recall it if I did, sir.

Q. You wouldn't recall going to get a \$500 bill to put it in that box?

A. If I went over and cashed checks to return money to this, or if we had money come into the office I may have put a \$500 bill in here.

Q. From what source would you get the \$500 if you didn't

get it from the bank?

A. I would get it from the bank or possibly we may have cashed it over the counter.

Q. Cashed what?

A. The \$500 bill.

Q. Let's take one of those \$500. How do you get ahold of them. You don't cash a \$500 bill somebody gave you

or you got it in the bank.

A. Yes, what I mean is someone could have come in and we would—someone may have come in to the office and given us \$500 and we in turn gave them \$500 in smaller bills.

- Q. In that event you would take the \$500 bills and put them in here?
 - A. In here?

Q. Yes.

A. If I was owing money to this, yes sir.

Q. Did you do that?

A. I may have, I wouldn't definitely say whether-

Q. You mean a transaction involving a \$500 bill wouldn't be impressed on your mind?

A. Not too definitely, no.

Q. Do you deal in \$500 bills?

[fol. 1905] A. No sir, I don't personally.

Q. I have never seen one before. This is amazing. Somebody gives you a \$500 bill and you have no recollection of it. You sit there and tell me somebody would give you a \$500 bill and ou wouldn't remember who gave it to you. Is that your testimony?

A. If they gave it to me personally?

Q. If they came in—if it came into your possession by reason of having cashed a check or something?

A. Sir, the amounts are all I count, if I have the proper

amount of money.

Q. I realize that. Let's not talk about that. Somebody handed you a \$500 bill, didn't they?

A. Yes.

Q. Who did, and under what circumstances.

A. Well, as I say, the odds are-

Q. Never mind the odds. We are talking about what the facts are. I am not interested in the odds. What are the facts? Who gave you the \$500 bill?

A. It probably came from the bank, yes.

Q. Probably?

A. It could have come over the counter.

Q. Did you go to the bank and get those two \$500 hills, or didn't you? Did you or didn't you?

A. I don't definitely recall, sir, whether I did or not.

Q. You don't know whether you went to the bank and got a \$500 bill or somebody gave it to you.

A. Whether it came over the counter, no, I don't, sir.

Q. You expect these people to believe you would come into possession of a \$500 bill—

[fol. 1906] A. Sir, \$100 bills are very common.

Q. \$1,000-

A. They come into the office there.

Q. You just got through telling me it was very unusual for you to see a \$500 bill.

A. \$500, it is.

Q. What are the circumstances under which you got it? When did you get it and who gave it to you?

A. Sir, I do not definitely recall when I got it or who

gave it to me or whether I got it myself.

Q. If you went to a bank you wouldn't ask for \$500 bills because you were going to cash more checks out of the fund and you can't cash checks with that. Why would you ask for a \$500 bill?

A. That, sir-

Q. It is incredible, isn't it?

A. No it isn't incredible, no sir.

Q. Didn't you tell this jury you are cashing checks out of this fund?

A. Yes sir.

Q. Can you cash checks with a \$500 bill?

A. No.

Q. Why would you get a \$500 bill from the bank then?

A. Well-

Q. Well, what?

A. They may have just given it to me.

Q. You already said you probably went to the bank and got it.

A. With the checks I cashed.

Q. Why would you ask for a \$500 bill in the bank?

[fol. 1907] A. I probably didn't ask for a \$500 bills, but they may have given me one.

Q. You accepted it?

A. Yes.

Q. You couldn't cash a check with a \$500 bill, when you got it.

A. No sir.

Q. Then-

A. There was ample funds generally exclusive of this amount then I probably didn't think it would make any difference if I had \$1.000.

Q. Not what you think now, then, what did you think then when they gave you the \$500 bill and who gave it to you and what went through your mind. Something went through your mind, mister. What went through your mind when you got the \$500 bill and who did you get it from. Tell this jury who you got it from?

A. Well, I must have gotten it from the bank, sir, or

else it came over the counter in the-

Q. Not what must have been done. What did you do?

A. I-

Q. I don't care about probabilities. How and when did you get it?

A. I definitely do not remember, sir, how I came into

possession.

Q. You want this jury to believe you can get a \$500 bill and don't know the circumstances under which you got it. I am 51 years old and I haven't seen one of them yet. How old are you?

A. 36.

[fol. 1908] Q. How many of these \$500 bills have you seen in your life?

A. (No response.)

Q. Well, how many?

A. I am trying to think, sir.

Q. It isn't very many, is it?

A. Yes, considerable.

Q. I thought you testified a little while ago you had only seen a few of them. You just got through testifying under oath you had only seen a few of them. Which time are you telling the truth?

A. Well, sir, you are getting me so confused-

- Q. I am confused? A. No, but I am.
- Q. I don't think the jury is confused. Why should you be confused, you are supposed to be sitting here telling the truth.

A. Yes.

Q. The truth will never confuse you, never. Where did you get that \$500 bill, two of them. Where did you get them? Under what circumstances and from whom and how?

A. They may have been originals—

Q. I am not interested in may have been. How did you get them? Tell me when and where?

A. I cannot tell you, sir, definitely how I got them.

Q. Two \$500 bills and you can't tell how you got them, but you got both by your own testimony in the last three years?

A. Yes sir.

Q. But you don't know the circumstances.

[fol. 1909] A. No I don't, no. These may be the original bills, sir, I don't know. I don't know.

Q. I thought you said you went to the bank and got

those bills?

A. Just a moment, you said how did I come into possession of them. They may have been in the envelope originally.

Q. Are you willing to testify now you never got those

bills, they are the originals?

A. No, I can't say that, sir.

Q. Is there anything you can say definitely as you sit here this afternoon? Is there anything you can say definitely?

A. Yes sir.

Q. It will be a pleasant relief when that happens.

By Mr. Regal:

Q. Mr. Verschueren, you tell us you might have got these bills from the bank. How many times have you been in the bank to pick up money, to cash checks, would you say! Innumerable, to use a phrase you've used before!

A. Yes sir.

Q. Many, many times in your job you have been to the bank?

A. Yes sir.

Q. And cashed thousands and thousands of dollars worth of checks?

A. Yes sir.

Q. Have you ever received a \$500 bill from the bank without making a request for it? They don't keep them in those tills, you know, at all. You can't get a \$500 bill from a teller because they don't keep them there. Did you [fol. 1910] know that, sir? Did you know that, first. Answer that question.

A. They are there if they have come in that day.

Q. Did you know they don't keep \$500 bills at all behind those windows. They receive them and take them somewhere else. Did you know that?

A. No sir, I did not.

Q. You know it now.

A. No, I don't.

Q. I am telling you now. They don't keep them there. You can't get a \$500 bill without making a request for it, or a \$1,000 bill, the most you can get is a \$100 bill. Did you know that? From the teller's window?

A. No, I did not know that.

· Q. We are going to assume, just for the sake of this discussion then, that is correct because I know it to be correct. That is what I have been told by people who know.

A. Yes sir.

Q. Now, we can get the banker in here and get the same banker you've got out there and I assume he is not an officer of the Western Conference of Teamsters or not a member of your union, i. he, the banker out there where you bank?

A. Pardon!

Q. The bank you go to-what bank do you go to?

A. Sixth & Denny Branch.

Q. Mr. Beck doesn't own that bank; does he!

A. Not to my knowledge.

[fol. 1911] Q. Well, assume the banker will come in and tell the truth, can we assume that?

A. Yes sir.

Q. He will tell us they don't keep \$500 bills in those windows. They don't give them to Fred Verschueren Jr. when he brings in checks, they don't give them to anyone under any circumstances unless they ask for them because when you present checks and you want cash the teller always says, "How do you want it, sir?" Don't they? They always say that to you every time, don't they?

A. They sometimes say, "Sir, do you care how you have

it?"

Q. Do you care? Then they give you a couple of \$100's or \$300 or \$400 or whatever, have they ever given you a \$500 bill to your honest recollection, sir?

A, Not to my recollection, no.

Q. You have never received a \$500 bill to your honest recollection. Have you ever received a \$500 bill over the counter at the union from somebody and if so, who was it and tell about the man and describe in detail because certainly you wouldn't have forgotten. When did you receive the \$500 bill or would you say now to your honest recollection you never did.

A. I possibly could have.

Q. I know you could have. You could have received a million dollar bill too. Do you have an honest recollection of receiving a \$500 bill over the counter at the union hall or do you not?

A. Not right off-hand.

Q. Off-hand. How long would it take you to think about it?

[fol. 1912] A. Well, it would be something to recall in my memory.

Q. You sit there and try to recall it for a few minutes.

Can you recall now!

A. I can, right now, recall no definite time.

Q. You can recall a time?

A. No, I cannot.

Q. You cannot recall any time whatsoever you ever received a \$500 bill?

A. No.

Q. What counter do you have reference to?

- A. Well, we have innumerable cashiers in the office. It could be any number of counters.
- Q. Well, now you said innumerable before and ultimately it ended up as hundreds. Is it hundreds or half a dozen.

A. Yes, half a dozen, six to eight.

Q. People that receive money?

A. Yes.

Q. What kind of money do they bring in to the Joint Council office? You are bookkeeper for the Joint Council and were before 1956—that is all you were, isn't it, bookkeeper?

A. Yes.

Q. As a bookkeeper you also took care of the receipts and disbursements?

A. Yes.

Q. Of the union, is that right?

A. Yes.

Q. You didn't sign checks until 1956?

A. Until Mr. Sweeny died.

[fol. 1913] Q. It was the middle of '56, around June or May or something of that nature?

A. Yes sir.

Q. Prior to that time you had nothing to do with the disbursements at all?

A. No sir.

Q. You did have something to do with the receipts of money?

A. Yes sir.

Q. Mr. Sweeny did too when he was in charge of them?

A. Yes sir.

Q. What did you do as far as receiving money? You were bookkeeper, weren't you, you were supposed to be keeping books. What did you do at the counter receiving money?

A. Well, I was also cashiering at certain periods, sir.

Q. Well, I can't understand how you would get that \$500 if you did get it, over the counter into that envelope because you would take checks from people, cash them there by owing the envelopes these mysterious envelopes, the money. You would take the checks, you would take the checks to the bank and get the cash and bring it back and put them in the envelope and of course you never asked for a \$500 bill because you said there were a number of times, or a couple of times, anyway, when you had to use the contents of these two envelopes 76 and 77, to pay payrolls, which took a good part of the contents of these envelopes, so you certainly wouldn't get any \$500 to pay your payrolls with, would you! Nobody up there makes \$500 in two weeks, do they!

[fol. 1914] A. No sir.

Q. Not on the payroll. So you wouldn't get \$500, you wouldn't make that special request at the bank, so how would that \$500 that came over the counter ever get into the envelope? Under what theory could that possibly get in the envelope? That wasn't your practice. You see, you told us your practice this afternoon, because you realized we wanted to see the envelopes, that you never went to them, you never took anything out and then you went to the union hall and came back and your memory was refreshed in the fresh air and you told us you cashed checks and paid payrolls at times with this money, but each time you would put a I.O.U. in there and then you would adjust it later. Go to the bank and get the money and put it back in here. Mr. Carroll asked you about the \$500 bill and you said you could have gotten it from the bank. We are assuming now, because I know and I think you are pretty well in agreement that you can't get \$500 bills unless you ask for them at the bank, that you couldn't have got it at the bank, so the only possible way you could have received that \$500 bill is that it is part of the original money that was put in there because you couldn't have got it over the counter, because that isn't your procedure. Nothing you got over the counter could have gone in that envelope. If it could, tell us how.

A. Well, I did go through that originally. As I said, I

would take monies from the box and-

Q. From envelopes 76 and 771

A. Yes. And cash checks within the office, if we did not [fol. 1915] have sufficient funds.

Q. And put LO.U.'s in there?

A. Yes. When the money came over the counter we could put these checks in our receipts and deposit them and place that money back into this particular box.

Q. If a \$500 bill did come over the counter you could have done that to some great extent and could have taken

care of a number of checks?

A. Yes.

Q. You can't recall now, at this time, that any \$500 bill ever came over the counter?

A. No sir.

Q. But you do admit, because it is only logical and sensible if a \$500 bill did come over the counter, you would remember it or there is a great possibility you should.

A. I should think so.

Q. You would say your best recollection is no \$500 bill ever came over the counter, is that right?

A. Yes.

Q. To the best of your recollection no \$500 bill ever came over the counter.

A. Yes.

Q. You would also say, to the best of your recollection, you never got that \$500 bill at the bank because that would have been a ridiculous thing to do, isn't that correct?

A. Yes.

Q. Now, will you say, if you didn't get it over the counter and didn't get it at the bank, it is one of the originals? [fol. 1916] A. It could be.

Q. Would you say it is, under those circumstances, to the best of your knowledge are the two \$500 bills two of the original bills you received from Mr. Beck?

A. I couldn't definitely say that, sir.

Q. To the best of your knowledge, I am not saying you took the figures down off of them, write them down, did you?

A. No.

Q. To the best of your knowledge, these are the two original \$500 bills you received in October of '54.

A. They could be, yes.

By Mr. Carroll:

Q. When you got Exhibit 77 from Mr. Beck, it was sealed, was it?

A. Yes.

Q. And the first time you opened it would be when? When was the first time you opened Exhibit 77?

A. I believe the first time it was opened, as I can recall,

was when he added some money to this.

Q. That doesn't fix the date at all, does it?

A. Well, that—well, the time he added some money to it would be '56, I believe.

Q. Was the envelope sealed from the time you got it in

'55 until the time he opened it in '564

- A. No, I think I had used some of the money out of here, but had resealed it.
 - Q. When was the first time then you opened it? A. Well, that would have been sometime in '55.
- Q. When did you first start using money out of these [fol. 1917] envelopes?

A. That would have been the time, sir.

Q. Well, in relation to when you received the envelopes, would it be a month or two months. Let's first fix the date you received the two envelopes. When would you say that date was?

A. Well, the original one was-

Q. Which is the original one, 771

A. This one, I believe, yes.

Q. When did you receive that?

A. Well, that was sometime in '55-no, '54.

Q. When was it?

A. Well, the original, yes-it was sometime in '54.

Q. You received the envelope which now has been marked Exhibit 77 from Mr. Beck in 1954?

A. I believe this is the original envelope, yes sir.

Q. Could you fix the month of 1954 you received this envelope from Mr. Beck?

A. Well, it was the latter part of '54.

Q. By the latter part you mean from September through December, in those months?

A. Somewhere in there.

Q. You would say within the last four months of '54, would you?

A. Somewhere, yes.

Q. Somewhere?

A. Well, yes, within that period.

Q. Within the last four months of 1954?

A. Yes.

Q. Is that correct? [fol. 1918] A. Yes.

Q. When did you first open that envelope?

A. Oh, probably the middle of '55.

Q. In the first four or five months of '55, would you say?

A. Yes.

Q. You can't pinpoint it any better than that?

A. No sir.

Q. It might be April, it might be June, it might be January!

A. Yes.

Q. Could you tell me, would it be within three or four months from the time you received it from Mr. Beck?

A. It was in that period, possibly a little more than that.

Q. It might have been five or six months before you first opened it?

A. Yes.

Q. Had you been told there was money in it?

A. Yes, it was self-evident.

Q. I don't understand that. It was a sealed envelope.

A. You can tell by the feel, practically.

Q. Your assumption was there was money in it?

A. Yes.

Q. Why did you open it?

A. Well, I opened it to cash checks.

Q. You hadn't used any of this money in this envelope for four or five months after the receipt of the envelope from Mr. Beck?

A. No sir.

Q. What had you done previously by way of cashing checks?

A. There were times when it was necessary to go all [fol. 1919] over the building to obtain enough money to cash certain checks.

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Q. Previous to the use of this money you had no way to cash checks for the employees like you did after you received this money, is that correct?

A. That is correct, yes sir.

Q. That is correct. Now you opened-

A. In some instances.

Q. What is that?

A. In some circumstances, depending on the time of the month and the time of the quarter and so on and so forth.

Q. What funds were available to you at any other time

prior to the use of this fund?

- A. Well, the general receipts coming over the counter, we could cash—
 - Q. They were not adequate at all times?

A. That is correct.

Q. When you found them inadequate, then you began to use these funds?

A. Yes.

Q. Is that correct?

A. Yes sir.

Q. The first time you opened this envelope was the first few months of 1955, is that correct?

A. To the best of my recollection, yes sir. I can't recall

the dates too well.

Q. I've given you six months leeway, do you need more?

A. It was generally in that period.

Q. What period?

[fol. 1920] A. The period-

Q. You state it now.

A. The first six months, six or nine months of '55.

Q. The first nine months, possibly, of 1955?

A. Yes sir.

Q. Well, then of course it would be maybe eight or nine months after the receipt of the money, wouldn't it?

A. Yes.

Q. It could almost be a year if you took September—from the time you received the money and took nine months in '55 we are back to one year.

A. Yes.

Q. That money could have laid dormant one year before you had-you began to use it?

A. Yes.

Q. Is that correct?

A. It is possible.

Q. The first time you opened it the yellow slip of paper was in it!

A. Yes.

Q. And you read it. Did you then-I believe you testified to that?

A. Yes.

Q. To whom was it directed?

A. I don't know that it was directed to anyone.

- Q. You have read it, have you?

A. Yes sir.

Q. Is there something in it that calls for action on the part of someone?

A. Not-how does it read?

[fol. 1921] Q. I am going to let you read it, and see if you can answer.

A. Money from car sales. Check amount if any owed to Western Conference or International to apply new purchases.

Q. It says check it out, doesn't it?

A. Yes.

Q. That calls for action on the part of someone, doesn't it? That is specific directions to someone?

A. Yes.

Q. To whom was that directed?

A. I have no idea, sir.

Q. To whom was the money handed by Mr. Beck?

A. To me, sir.

Q. Would you assume it was directed to you?

A. No, I didn't assume it was a direction to me, sir.

Q. Did you inquire, having read it, who was supposed to check it out and see what was supposed to be done with this money?

A. That-

Q. Check out if any goed to Western Conference or International. Who is supposed to check it out, now?

A. Well, I don't know, sir. I don't consider it my-

Q. You considered it yours to use for the purpose of cashing checks which is diametrically opposite from the purpose to which it was put there, to check out to see if any owed to International or Western Conference. That is what, if you had been following those directions, you would have checked to see if any money was owed to the Western Conference or International, wouldn't you?

A. Well, I don't know definitely what it was for orig-[fol. 1922] inally. I knew it was something about cars I was

directed further I didn't know what to check on.

Q. What direction did you receive when you obtained the

money from Mr. Beck?

A. As I say, all he said was just hold this and something about cars, that was the extent of it.

Q. Well, what did he say specifically besides hold it?

A. Well, sir, that is four years ago. I don't remember

what he said specifically.

Q. But the first time you opened the envelope which has been marked Exhibit 77, you did read what is on Exhibit 79 to check out if any owed to Western Conference or International to apply to new purchases. You did read that?

A. Yes.

Q. You read money from car sales, didn't you!

A. Yes.

Q. But you didn't follow the instructions here.

A. Well, I hadn't been instructed definitely by anyone. I didn't know where to go. I didn't even know what the money was for.

Q. Weren't you employed there!

A. Yes.

Q. Whose obligation or duty was it to check this out? You had been given the money. To whom did the duty evolve itself upon?

A. Well, I was told to hold it.

Q. You didn't hold it though, did you?

A. It was always available there, sir, in one form of negotiables or another.

[fol. 1923] Q. Who would normally check that out, Mr. Verschueren? Aren't you the auditor?

A. No sir, I am just the bookkeeper there.

Q. Wouldn't you check it out?

A. Well, I imagine that would be up to the duty of one of the officers.

Q. For example, who f

A. Oh, the anyone Secretary-Treasurer or-

- Q. Did you call it to their attention to follow out those instructions?
 - A. No sir. I didn't.

Q. Wouldn't that be normal procedure, having read the instructions to turn them over to these officers you say should be taking care of it instead of letting it lay three years and using it for your own purposes?

A. I had no idea what they were to check, sir, and I wasn't informed fully enough from Mr. Beck to know what

we are supposed to be checking.

Q. You made no effort to find out?

- A. At a later date I did ask him once or twice.
- Q. What did he tell you then?
- A. He just said to hold it there.

Q. Hold the money there.

A. Yes sir, until it was-until they could determine-

Q. Until what?

A. Until it was determined where it belonged, that is all.

Q. He said that to you. To hold the money there until it can be determined where it belonged?

A. Words to that effect, or possibly just said hold it. All I know I did ask once or twice and it was somewhat

[fol. 1924] passed over.

- Q. I don't want to belabor this, but isn't there a wide difference in leaving out whole sentences and putting in new sentences?
- A. Sir, we—when you are trying to think back four or five years, I can't remember what the full conversation was, let alone what the opening sentence was.

Q. I agree, in some instances. Why then assume something and put a sentence in which you later say that sen-

tence wasn't in there.

A. That is very possible. Q. Why do you do that?

A. I don't know, sir.

Q. First you say hold it, that is a complete sentence. Then you say, until such time as someone can determine what to do with it. Then you say, maybe he didn't say until such time as someone can determine what to do with it, maybe all he said was hold it.

A. That is very possible.

Q. Why add that other sentence, if you can't remember? Why do you assume? If you assume, why assume that?

A. I can't say, sir.

Q. You are not getting caught here in some kind of conspiracy, are you?

A. No sir.

Q. You are not being made a party to something you are not a party to, are you?

A. No sir.

Q. Are you sure? Somebody just didn't ask you to-

A. To the best of my knowledge.

[fol. 1925] Q. Somebody didn't ask you to come down today and take a little of the heat that is going on, did they?

A. No sir.

Q. You have been a poor witness, don't you admit?

A. Sorry, sir.

Q. You would admit it, wouldn't you?

A. How do you mean, sir?

Q. All your vacillation, your equivocation, your poor memory, by your changing of sentences—I can go on if you want me to.

A. Yes sir.

Q. You have done all those things, have you not?

- A. I know, sir. When you sit here this long you become quite nervous, even at the outset you are nervous to begin with.
 - Q. That would excuse all these things?

A. Not all of them, no sir.

Q. What is your excuse for these other things, why have you vacillated, equivocated, had loss of memory, changed words around. What is the explanation? Because you are doing something that is not the truth?

A. No sir.

Q. You have got a good reputation.

A. Yes sir.

Q. Are you being dragged into something you don't belong in to protect somebody that doesn't need protection?

A. No sir.

Q. Are you sure!

A. Yes sir.

Q. You are positive? [fol. 1926] A. Yes sir.

By Mr. Regal:

Q. Mr. Verschueren, with reference to this envelope, Exhibit 77, this is the original envelope given to you by Dave Beck in October or November of 1954. This envelope was sealed when you first got it, this is Exhibit 77?

A. Yes sir.

Q. And you didn't open it again until the early part of 1955.

A. Sometime in 1955.

Q. Around six months went by before you had occasion to go into it. When you went into it you saw this piece of paper in there. You saw this piece of paper, Exhibit 79 when you opened it with your finger and unsealed it?

A. Yes.

Q. Then you read the piece of paper. You did whatever you had to do with the money and you resealed it, is that right?

A. I am not certain that Presealed it right at that time.

Q. But it was resealed when the money was put back in. You always kept these envelopes sealed?

A. Not always.

Q. You resealed it at that time, after you put the money back, after the first transaction, the first part of '551

A. I won't definitely say I did, no.

Q. When did you reseal it after the first transaction, the first time you opened it?

A. I couldn't tell you as to dates, sir.

Q. Approximately when? A few months after? [fol. 1927] A. I couldn't even approximate.

Q. A year or two years after. Did you leave it open or what? You told Mr. Devin this afternoon that you re-

sealed it right after you opened it. This time you say you didn't. Why do you hesitate?

A. Well, because I—when you open an envelope innumerable times how do you know which time you sealed it

and didn't?

Q. You told Mr. Devin you opened the envelope and resealed it. He questioned you at length about opening it with your finger and you would reseal it and then I think he went further and asked you whether or not you used any glue on it and you said no, and still when we have the envelope in this condition, it is stuck very well—and you are getting your two \$500 bills back now, don't miss that part on the record. Do I understand you told Mr. Devin you resealed this envelope each time that you opened it?

A. Well-

Q. Now, you didn't, is that right?

- A. No, I didn't every time. Did I say I resealed it every time?
- Q. I don't think you said every time, you said you resealed it the times you opened it and put the money back and resealed it and Mr. Devin was very, very interested, he asked you what kind of glue did you use glue and you said no you didn't.

A. I didn't.

Q. This must be excellent glue on the Western Conference of Teamsters envelopes because the thing is perfectly sealed now. Understand we can send the envelope to the [fol. 1928] F.B.I. and determine from them whether or not it has been resealed numerous times, or innumerable times as you said. You were in there innumerable times. You understand that, don't you?

A. Yes.

Q. So if you decide all of a sudden here you are going to tell us the truth—and nobody in the room believes one word you say—you are telling us now that everything you have testified to here today is the truth?

A. Yes sir.

Q. You have nothing to hide?

A. No sir.

Q. And you are perfectly willing to undergo any sort of

examination to determine if you are telling the truth, is that correct?

A. Yes sir.

Q. There is nothing at all that is going to stop you from proving what you said?

A. No sir.

Q. If I tell you now that I have arranged to give you a lie detector test, will you take it?

A. I would have to consult my attorney.

Q. Yes, that is what I thought, because you are not telling the truth, are yout If you were telling the truth you would have no qualms about taking a lie detector test because a lie detector will not work on a truthful person. It is an exceptionally fine mechine, you can't fool it and you are absolutely a perfect subject because you are young and you have your wits about you and you would fail miserably unless you are telling the truth. Will you take [fol. 1929] the test?

A. I have heard differently about the lie detector.

Q. Will you take the test?

A. No, I will not.

Q. You will not. You don't have to consult your attorney do you? You don't want to take any test, do you?

· A. I will consult him first.

Q. But you won't take any test, will you? Will you, now?

A. I will consult him first.

Q. Yes, that is what I thought.

By Mr. Devin:

Q. Now, Mr. Verschueren, I would like to get as definite an answer as I can from you. Your answers have been largely very indefinite, but you stated this afternoon when you first were examined: "Well, sir, that is why I want to come back and clarify my prior testimony. It was absolutely beyond my recollection that he had turned over monies to me to be held until their proper discretion was realised. I still don't know their proper discretion and I did not recall it until after my prior testimony that I had them on hand. It didn't come up at the time." You meant the envelopes I presume, is that what you were referring to when you said you had them on hand?

A. The funds, yes sir.

Q. Now, you stated here, "I still don't know their proper discretion." By that you meant their proper application, I guess, didn't you?

A. Yes sir.

Q. And you still don't know them, do you't [fol. 1930] A. No, I don't, sir.

Q. You haven't known them at any time, have you?

A. No, I have not.

Q. And no one has ever asked you to determine where these funds were to be deposited or to go, have they?

A. No sir.

Q. Dave Beck at no time ever told you to deposit these funds in the account of the Western Conference of Teamsters or the Joint Council or the International Brother-hood, did het Now, you are under oath.

A. He did not tell me to deposit them.

Q. Of that you are positive, are you not?

A. Yes.

Q. You are positive that he did not tell you that.

A. No, he did not tell me that; no, he didn't.

- Q. And had he told you that you would have attempted to find out where they should have gone, isn't that true?

 A. Yes.
- Q. Do you recall whether or not you saw this slip, Exhibit 79, in the envelope when the envelope was first delivered to you in the fall of 1954?

A. No. You mean when it was first delivered?

Q. Yes. A. No.

Q. You didn't even look in the envelope at that time, did you?

A. No.

Q. It was sealed, wasn't it?

A. Yes.

Q. Who sealed it?

[fol. 1931] A. Mr. Beck.

Q. Did you have authority from him to unseal it?

A. No.

Q. You unsealed it then at your own risk, did you?

A. Yes sir.

Q. And you say you unsealed it some time in the middle, or some time in 1955 in order to cash checks?

A. Yes air.

Q. When was it that Mr. Beck put the rest of the money in that envelope? Was that the envelope that he put additional money in?

A. Yes, yes.

Q. When did he do that?

A. Well, that was some time in '56, I think that was the

latter transaction.

Q. Well, now, I didn't recall that you said that this morning or this afternoon. Until you mentioned '56 a moment ago it was the first time I had heard any '56 transaction. I thought you said they were both in '54 and '55. What time in '56!

A. Oh, the early part of '56.

Q. Do you have any way of fixing that date?

A. No sir.

- Q. Now, when did you get the second envelope, Exhibit
 - A. That was in the interim there some time, sir.

Q. When, about?

A. It was some time in '55, I think.

Q. The fall?

A. I won't say. I am not thinking too well right now.

Q. There was never any money added to that envelope, was there, by Mr. Beck?

[fol. 1932] A. No.

Q. This paper, Exhibit 79, remained in that envelope during the time that you would use the money for cashing checks. Each time you would open it it would be there?

A. Yes.

Q. You never inquired of Dave Beck or anyone else what he meant by that note, did you?

A. I didn't mention the note specifically, no sir.

Q. You never asked Mr. Beck what he wanted to do with the money?

A. I did do that, sir.

Q. What did he say? A. Well, he just said-

Q. To hold it?

A. Hold on to it.

By Mr. Regal:

- Q. Mr. Verschueren, in these envelopes was \$6,600, do you know?
 - A. Yes sir.
- Q. Is there any possibility you could have made some mistake in the transactions you handled, or were you very careful with this money?
 - A. Yes sir.
 - Q. You were extremely careful?
 - A. Yes sir.
- Q. Would you say there is any mistake at all in the amount of money Mr. Beck gave you and the amount of money in there now, in your pocket?
 - A. No sir.
 - Q. You say there is no mistake whatsoever?
 - A. No sir.

[fol. 1933] Q. It is the exact amount.

A. Yes sir.

By Mr. Carrell.

- Q. Do you have any explanation for Mr. Beck giving you this money instead of one of these officers you said would have the authority to check this out?
 - A. None, sir.
- Q. You said there were several other officers that would have the authority to do what that particular paper directs someone to do.
 - A. Well, there are two.
 - Q. Who are they?

A. Well, it would be the president-possibly three-

president, vice-president and secretary-treasurer.

- Q. But you would not have the authority to do what that directs you to do. You, as a bookkeeper, would not have that authority?
 - A. No sir.
- Q. Notwithstanding that, Mr. Beck gave you the money in those envelopes?
 - A. Yes sir.
- Q. Not only once, but on three occasions he told you to hold the money?

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A. Yes sir.

Q. Is that correct?

A. Yes air.

Q. Is there any explanation for why he would give you the money in those envelopes when he knew you couldn't do what the directions called for you to do, is that correct?

A. Yes sir.

[fol. 1934] Q. Do you have an explanation as to why he would give you that money?

A. Nosir.

- Q. Did you ask him on these occasions that you talked to him?
- A. Well, I only asked him what should be done with it and that was the end of it.
- Q. Why did you ask him what should be done with it when you had no authority to do what that told you to do?

A. Because he might possibly direct somebody else to

take care of it.

- Q. Did you ask him if you should give it to somebody else to carry out those instructions?
 - A. I only asked him what should be done with the money.
- Q. Was he surprised when he found out you had been cashing checks out of this money?

A. I don't know whether he knows it.

Q. Did he reprimand you or chastise you?

A. No sir, I don't know that he knows it.

Q. Beg pardon!

A. I don't know he knows it, sir.

Q. You have never discussed that with him?
A. Not to my recollection, anything definite.

Q. What did you discuss that was not definite about it?

- A. I mean, the subject matter never came up to my recol-
- Q. To this day you have never told him you used that money to cash checks?

A. I don't know, sir.

Q. Don't know what?

[fol. 1935] A. Over the years it might have come out. I can't definitely say one way or the other whether it did or not.

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Q. You may have told him the purpose for which you were using the money?

A. I may have.

Q. Do you have any recollection of it at all?

A. Not a definite recollection, no sir.

Q. Do you have an obscure or nebulous recollection of it.

A. Yes-well, no-I mean, I just may have discussed it

with him. I wouldn't say one way or the other, sir.

Q. You leave me. I just can't quite get ahold of these things. No, yes, maybe. Do you have any recollection at all of discussing the use of this money with Mr. Beck?

A. Any recollection? No, none. Not a definite-no sir,

not that I can recall:

Q. There is nothing now, in searching your memory that leads you to believe that at any time between the receipt of this money, as you sit on this stand, that you ever told him you used that money?

A. It is highly possible, but I do not-as I say, have a definite recollection-definitely recall having a conversation

with him concerning it.

Q. What makes it highly possible, yet you have no recollection. Those are two inconsistent theories.

A. There are many, many conversations that I can defi-

nitely recall.

Q. I am talking about a specific conversation. What makes it highly possible or probable. [fol. 1936] A. (No response.)

Q. Wouldn't it be logical, if not probable, you don't re-

call anything about it?

A. As I say, I don't definitely recall it.

Q. The probabilities are that you did not, rather than

highly probable, as a matter of logic or am I wrong?

A. Well, no the extent that I would probably have brought it up at one time or other, but I cannot say I definitely did. I don't know whether he knows to this day. I can't definitely say whether he knows or not that the money was in use.

Q. Yet, Mr. Beck with all of his astuteness would give you this envelope with \$6,000 in it with specific instructions to do something and you would retain it for three years

and not do it?

A. Well, I was not directed—I did not think I was the one that should be directed.

Q. Nor did you ask him to whom you should give this money to carry out the directions, having read them.

A. Sometime later, I asked him about the money. As I

say, all he said was just hold it.

Q. You didn't say to whom should I give this money to carry out the directions contained in the envelope?

A. No. Generally when I talked to Mr. Beck it was very

hurriedly and he was very curt and sharp.

Q. Is it odd to you that Mr. Beck would single you out to give you this \$5,000 or \$6,000?

A. Is it odd?

Q. Yes.

A. No, no, I don't think so.

[fol. 1937] Q. That would be the normal, acceptable practice.

A. Well, due to the fact that I did have other monies there from time to time that I did hold for him.

Q. Have you told us what monies they are and over what period of time you held them?

A. Well, I don't know what the amounts were.

Q. Or from what sources?

A. No.

Q. Is there anything about them you recall at all than you did have other money?

A. That is all, just put in envelopes.

Q. Nothing written on the envelopes?

A. His name.

Q. You delivered them back to him at given times when he would request them?

A. Yes.

Q. They always were sealed envelopes?

A. Yes sir.

Q. Did you also open those and make change out of them?

A. No.

Q. How did you distinguish them?

A. Those had his personal name on them, as I say, this money he told me to hold.

Q. This says Western Conference on here.

A. Yes sir.

Q. You are permitted to open that, unseal it and take money out of it, but if Mr. Beck's signature is on it you can't take the money out. Is that a fact? I am trying to distinguish that, what envelopes do you open and what don't you?

[fol. 1938] A. This money, as I say, I was told to hold down there, so I knew there wouldn't be any immediate call

for it, you see.

Q. You were told to hold this money?

A. Yes.

Q. But the other envelopes you were not told to hold?

A. I was told to keep them there for him.

Q. Hold and keep!
A. Same difference.

Q. Why didn't you open those too and give them to somebody for cashing checks?

A. Because they had his personal name on it and I

thought he might be calling for that money any time.

Q. How do you rationalize that? This has got Western Conference on it, maybe he is going to call for that. As a matter of fact, this has specific directions in it which you ignored. Now where are we?

A. I don't know. I don't follow you there.

Q. I am having difficulty following you. What envelopes do you open and take money out of? If it says Dave Beck you don't open it, if it says Western Conference you unseal it and take money out and use it. How do you distinguish?

A. As I say, I knew these funds would be there-I mean,

there would be no rush call of.

Q. How did you know that?

A. Because he told me to hold them there until such a time as they could determine what could be done with them.

Q. You didn't tell Mr. Devin he told you what you now said.

[fol. 1939] A. He just told me to hold the monies until further—

Q. Until what?

A. Until further notice.

Q. Until further-

A. Well, until further notice, or words to that effect. I don't know his exact words, Mr. Carroll. It was along those lines.

Q. Well, that might be twenty-four hours, that might be

two days.

A. Yes.

Q. Well, then, why did you open it and unseal it and use the money if that is the factor or yardstick you distinguish this transaction and a transaction with Daye Beck's name on it. Where are we! That is the yardstick you said—

A. It had Dave Beck's name on it.

Q. That is the reason you didn't open it?

A. Yes sir.

Q. That is the sole reason?

A. That, and I knew it was his personal money, yes sir.

Q. You knew it was Dave Beck's personal name because it had Dave Beck's name on it?

A. Personal funds.

Q. That must be why you didn't open it?

A. That is what I said prior-

Q. I thought you said the reason you opened this envelope that—even though it had the name, was because it might be some period of time before somebody called for it, that is why you opened it.

A. Well, there was—there seemed to be no urgency. After [fol. 1940] these funds, after they laid there for that period of time that is when I did start cashing checks on them,

when we ran into an emergency.

Mr. Devin. Does any juror have any questions you would like to ask Mr. Verschueren?

By Mr. Wallace:

Q. I would like to ask you, Mr. Verschueren, supposing this was your own individual business you had been conducting, handling this money, suppose you was in business, would you recommend running it on the same principle that the union has been running these money matters?

A. Would I recommend that the union-

Q. You was running a business of your own, would you

say it would be a good idea to run it in this particular way that the union business has been handled?

A. Well, along some lines, no sir.

By Mr. Ostroth:

- Q. Mr. Verschueren, I am just a citizen here on—incthe community and I don't understand some things the lawyers down here know. I wonder if you could straighten me out on this. The Western Conference and Joint Council 28, are they in the same building? Do they have separate buildings?
 - A. They are in separate buildings now.

Q. They are near each other?

A. Yes.

[fol. 1941] Q. When did they move apart, how long ago, a few months or a year?

A. Sometime in-when the new building was completed,

I think sometime in '55.

- Q. Well, is the Western Conference a larger organization than the Joint Council? I mean by that, do they have a larger-office force or smaller office force than Joint Council 28?
- A. Well, the Western Conference encompasses innumerable smaller divisions and thereby has much larger office force.
- Q. More people actually working there for the Western Conference than for Joint Council 28?

A. Yes.

Q. How many does the Joint Council have employed, roughly?

A. Well, twelve.

Q. Twelve for the Joint Council! And the Western Conference has how many, maybe 50 or 60?

A. Yes, including all divisions.

Q. Are there some local union offices there in the same building with Joint Council 28?

A. Yes.

Q. How many?

A. Oh, 20.

Q. 20 unions. They employ half a dozen people?

A. No, I would say the average would be 3. I think the overall average would be 3.

Q. About 60 in the unions and six or eight in the Joint Council. Do you cash checks for the Western Conference. You don't cash checks for them, do you?

A. We have, on occasions.

[fol. 1942] Q. They don't have their own facilities for cashing checks?

A. No, no they have no cash.

Q. You would have need for more than \$400 sometimes if you were cashing checks. The same office doesn't make out checks for the Joint Council and Western Conference and the separate unions?

A. No, the individual offices do.

Q. Your individual office will be cashing checks for six or eight people.

A. If you consider just the Joint Council, but 174 is in

there.

Q. They pay all at the same time, do they?

A. Approximately yes, every two weeks, on Friday.

Q. Do you know Mr. Beck pretty well?

A. Yes sir.

Q. When he comes by do you say hello Mr. Beck or wait for him to say hello to you? Are you personally acquainted with him?

A. We usually greet each other, yes sir.

Q. You said way back that it was necessary to get \$50 or \$100 for Dave Beck to cash some checks for him. \$50 or \$100 you said two or three times or was it eight or ten times, it seems like eight or ten times you cashed checks for him.

A. No, it was a couple of times.

By Mr. Regal:

Q. You cash them for him personally when he came down and asked for the cash and gave you his personal check.

[fol. 1943] A. Personal or one made out to him, yes.

By Mr. Ostroth:

Q. When was the last time you used these envelopes for cashing checks? Were you asked that?

A. Well, just recently, sometime in '57.

Q. Not since you were here three weeks ago?

A. No.

Q. I couldn't understand why you would seal the envelopes back up all the time, either.

A. I didn't seal them all the time.

Q. I didn't understand why you would want to seal them. I just got one more question here, I guess. The Joint Council sometimes would not be able to find everybody that is necessary to sign their payroll checks, six or eight checks, so you—

A. 174.

Q. Well, it wouldn't happen at the same time, would they, or would they all be off somewheres?

A. It could happen the same time, yes.

Q. Then they would all come over to your place and get the checks cashed?

A. Yes.

Q. Would you take the unsigned checks for the Western Conference and use Joint Council funds to cash them?

A. Yes.

Q. Then what would you do with these checks. You couldn't put these checks in the bank because they weren't signed.

A. They would generally have one signature and I would have to wait until the other party returned and could obtain [fol. 1944] his signature and thereby—

Q. Who endorsed the checks? The bank wouldn't take

them without being endorsed.

A. The payee would endorse them and we would hold them with one signature on them.

Mr. Ostroth: I guess that is all.

(Witness excused.)

[fol. 1945] CERTIFICATE

State of Washington, County of King, ss.:

I, Louise Sartor, one of the official court reporters of the State of Washington in and for the County of King, do hereby certify that I am the official court reporter assigned to the King County Grand Jury convened in May, 1957;

That I was present before the Grand Jury and reported the testimony of Fred Verschueren, Jr. given before said Grand Jury under oath on the 10th day of July, 1957;

That the above and foregoing is a full, true and correct transcription of said notes taken in the above entitled cause and personally transcribed and typed by me;

That the foregoing transcript of testimony is being furnished to the defendant pursuant to Order Granting Defendant Permission to Transcribe Certain Portions of Grand Jury Testimony, signed by the Honorable Lloyd Shorett on the 30th day of April, 1958.

Louise Sartor, Official Court Reporter.

[fol. 1946] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

No. 30967

STATE OF WASHINGTON, Plaintiff,

VS.

DAVID D. BECK, also known as DAVE BECK, Defendant.

Motion for Orders Allowing Defendant to Publish and Inspect Transcript of Grand Jury Voir Dire and Allowing Defendant to Publish and Inspect Transcript of Said Grand Jury Proceedings—Filed July 30, 1957

Comes Now the defendant David D. Beck and respectfully moves this Court for an order granting defendant's attorneys permission to publish and inspect transcripts of the voir dire examination of the Grand Jury and the transcripts of said Grand Jury proceedings insofar as they pertain to the defendant David D. Beck in order to enable defendant to prepare motions to set aside the indictment against defendant.

This motion is based upon the files and records of this case as fully set forth herein and the affidavit hereto at-

tached and the following facts and irregularities:

- 1. That the voir dire examination of Grand Jury is a matter of public record.
- 2. That the following irregularities occurred during the examination, investigation and deliberation of the Grand Jury:
- a. That there was not sufficient examination of the Grand Jurors, as required by law, to exclude those persons who were biased and prejudiced against defendant.
- b. That the Grand Jurors, or some of them, were prejudiced against defendant.
- c. That there was improper influence exerted upon the Grand Jurors.

W. Wesselhoeft, Attorney for Defendant.

[fol. 1947] [File endorsement omitted]

No. 30967

Affidavit in Support of Motion for Order Granting Defendant's Attorney to Publish and Inspect the Transcript of Grand Jury Voir Dire Examination and the Grand Jury Proceedings.

State of Washington, County of King, ss.:

W. Wesselhoeft, being first duly sworn on oath deposes and says:

That he is the attorney for David D. Beck, and he makes this affidavit for the purpose of obtaining a transcript of the Grand Jury voir dire examination and a transcript of the Grand Jury proceedings. That approximately three weeks prior to calling of the Grand Jury, the defendant appeared, under subpoena, before an United States Subcommittee investigating possible improper and illegal activities in Unions, and that as a result of said appearance, defendant was the subject of considerable adverse publicity through means of radio, television and newspapers. That deponent has information, and therefore believes, that a large segment of the population of Seattle, Washington became biased and prejudiced against defendant. That deponent has information, and therefore states, that despite the fact of the abovementioned bias and prejudice against the defendant in the community, there was no attempt to exclude from the Grand Jury those persons of who were prejudiced and biased. That, in fact, the foreman of said Grand Jury admitted being prejudice against labor unions and was not excluded from said Grand Jury. That deponent [fol. 1948] has information, and therefore states, that there was overheard outside the Grand Jury room, as reported by newspapers, a considerable amount of pounding on the table and loud voices, the explanation for which fact can be properly analyzed only by review of a transcript of the Grand Jury proceedings.

W. Wesselhoeft

Subscribed and sworn to before me this 30th day of July, 1957.

[Illegible], Notary Public in and for the State of Washington, residing at Seattle.

[fol. 1948a] Clerk's Certificate to foregoing paper (omitted in printing).

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR THE COUNTY OF KING

No. 30967

[Title omitted]

Amended Motion for Order Permitting Defendant to Publish and Inspect Transcript of Grand Jury Voir Dire and Allowing Defendant to Publish Grand Jury Proceedings—Filed September 16, 1957

Comes now the defendant, Dave Beck, and respectfully moves the Court for an order permitting his attorney to obtain and inspect a transcript of:

- (1) The proceedings relative to examination of the Grand Jurors with respect to their eligibility and qualifications for service;
- (2) The proceedings relative to and including instructions and directions given by the Court to the Grand Jury, relative to their duties and obligations;
- (3) The proceedings of the Grand Jury, including the testimony and the directions and instructions made or given to the Grand Jury by the Prosecuting Attorney or by those acting, or claiming to act, for the Prosecuting Attorney, but not including deliberations of the Grand Jury, if any, in the absence of the Prosecuting Attorney or those acting, or claiming to act, for the Prosecuting Attorney, and not including any records indicating the manner in which any Grand Juror voted with respect to the return of the indictment.

This motion is based upon the files and records of this case, together with the affidavit of Charles S. Burdell attached hereto and the affidavit of W. Wesselhoeft, previously submitted herein, and is based further upon the following facts, grounds and allegations:

(1) That the examination of the Grand Jurors and the empanelment of the Grand Jury, together with the instruc-

tions and directions of the Court, were conducted in open court and are not, and were not intended to be, secret or confidential;

(2) That certain irregularities occurred in the course of the empanelment and proceedings of the Grand Jury, including the following:

[fol. 1950] (a) That there was not sufficient examination of the Grand Jurors, as required by law, to exclude those persons biased and prejudiced against the defendant:

- (b) That the instructions and directions of the Court to the Grand Jurors were erroneous and prejudicial;
- (c) That the Grand Jurors, or some of them, were prejudiced against the defendant;
- (d) That unauthorized persons were permitted to attend the proceedings of the Grand Jury;
- (e) That the Prosecuting Attorney, and persons acting, or claiming to act in his behalf, erroneously instructed and directed the Grand Jury in its proceedings, and in connection with the interrogation of witnesses engaged in erroneous and prejudicial conduct.

This motion is made in order that the Court may particularly examine and consider the aforesaid alleged irregularities, and is made subject to such limitation upon the use of the aforesaid transcript as the Court may direct, and subject, further, to the understanding that the transcript will be prepared by the Court Reporter who attended the proceedings and that the defendant will compensate said reporter for her services in preparing the transcript.

And, in the alternative, in the event the aforesaid motion is denied, the defendant respectfully moves that he be permitted to obtain a copy of the transcript of the aforesaid proceedings in the manner stated above, and that said transcript be provided to the Court for its examination, but not for the examination of the defendant, and that said transcript be made a part of the record in this case for examination by such appellate court as may hereafter consider any of the proceedings in this case.

This motion is made without prejudice of the right of the defendant herein to move to set aside the indictment herein on the grounds and by reason of the facts herein alleged.

Charles S. Burdell, Attorney for the Defendant.

[fol. 1951]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

No. 30967

STATE OF WASHINGTON, Plaintiff,

V8.

DAVID D. BECK, also known as Dave Beck, Defendant.

Appidavit of Charles S. Burdell No. 30966

STATE OF WASHINGTON, Plaintiff.

VS.

DAVE BECK, Jr., Defendant.

AFFIDAVIT OF CHARLES S. BURDELL

State of Washington, County of King, ss.:

Charles S. Burdell, being first duly sworn on oath, deposes and says:

That affiant is one of the attorneys for the defendants in the above entitled cases.

For a substantial and continuous period of time prior to and during the proceedings of the Grand Jury there appeared in the public press, and there was broadcast through the media of radio and television, throughout King County, many news reports of an extremely adverse and damaging nature to the defendants herein, and particularly the defendant Dave Beck, many of which reports were and are wholly untrue and unfounded and none of which were based upon any court verdict or judgment. Among these reports there was included a report attributing to persons of national prominence a statement that the defendant, Dave Beck, "stole" certain sums from the labor union of [fol. 1952] which he is President, and that he engaged in other forms of misconduct. Reports of this nature were continually and repeatedly broadcast throughout King County.

Affiant is advised and believes, and therefore avers, that it is well known throughout King County and elsewhere that such reports, because of their constant repetition and for other reasons, were accepted as true by a substantial portion of the community and that such reports did and must have created extreme prejudice and hostility against the defendants on the part of the community and on the part

of the Grand Jurors.

And affiant believes and avers that such reports were of such an extreme and bitter nature that the Grand Jury could not possibly have conducted any impartial consideration or investigation of the matter involved in the indictments herein except and unless the Court and Prosecuting Attorney maintained the most strict observance and care with respect to the rights of the defendants to due process and consideration and deliberation of impartial Grand Jurors, and that it is in fact doubtful whether under any circumstances in view of the nature of the aforesaid publicity, any fair and impartial Grand Jury proceeding could have been conducted.

The Grand Jury was empaneled at a critical period during the publicity referred to above; but nevertheless affiant is advised and believes and therefore avers, that in the course of empaneling the Grand Jurors the Court made the following statement:

"It seems unnecessary to review recent testimony before a Senate Investigating Committee except to say that disclosures have been made indicating that officers of the Teamsters Union have, through trick and device, embezzled or stolen hundreds of thousands of dollars of the funds of that union . . . It has been alleged that many of these transactions, through which the money was siphoned out of the union treasury, occurred in King County.

"The president of the Teamsters Union has publicly declared that the money he received from that union was a loan which he has repaid. This presents a question of fact, the truth of which is for you to ascer-

tain."

Affiant believes, and therefore avers, that the aforesaid statements of the Court were erroneous, prejudicial and improper as a matter of law and further that they must

and did in fact prejudice the Grand Jurors; and

Affiant further believes and avers that, contrary to the statement of the Court, the question of whether certain sums were or were not loaned was not the "question of fact" the truth of which was or is involved in the charge attempted to be made by the Grand Jurors in the instant cases.

[fol. 1953] Affiant is advised and believes that at no time in the course of the Grand Jury proceedings did the Court or the Prosecuting Attorney advise or direct the Grand Jurors that they should wholly and completely disregard news reports of the nature referred to above or that they should wholly and completely ignore and disregard any prejudice or attitude of hostility to the defendants by reason of said reports or by reason of the fact that the defendants were under investigation by agencies of the United States, or by reason of the fact that the defendants were officers in a labor union.

Affiant is further advised and believes, and therefore avers, that one of the prospective Grand Jurors expressed a prejudice against labor unions and against the defendant, Dave Beck, but that the Court did not exhaustively and fully determine whether such prejudice would affect the impartial consideration of the Grand Jurors but on the contrary appointed said prospective juror as foreman of the Grand Jury.

Affiant has not interrogated or questioned any witness who appeared before the Grand Jury, although two witnesses have made casual statements to affiant concerning the nature of their interrogation and the attitude of the Prosecuting Attorney; and from these statements and from casual conversations with other attorneys, affiant believes that certain witnesses were threatened, harassed, coerced and intimidated in the course of the Grand Jury proceedings; and that if such conduct did take place, the defendants herein were prejudiced thereby.

Affiant believes that it is his duty, as attorney for the defendants herein, to investigate these matters, and believes that it will be his right and duty to interrogate the witnesses known to have appeared before the Grand Jury if a transcript to the proceedings relating to their testimony is not made available as requested in the attached

motions.

Affant is advised by several persons who observed the conduct of the Grand Jury, that the Prosecuting Attorney, or persons representing or claiming to represent him, attended several sessions of the Grand Jury during prolonged periods when no witnesses were being interrogated. Affant is advised and believes that it is improper and illegal for the Prosecuting Attorney or his staff to urge or direct a Grand Jury to find or return an indictment. Affiant believes it to be his duty to investigate this matter and believes that due process requires a consideration thereof. [fol. 1964] Affiant is further advised and believes that certain of the attorneys who attended sessions of the Grand Jury were not in fact duly and properly appointed as deputies to the Prosecuting Attorney and that they were therefore unauthorized to attend any proceedings of the Grand Jury, and that their attendance would constitute grounds for setting aside the indictment herein.

Charles S. Burdell

Subscribed and sworn to before me this 16th day of September, 1957.

W. Wesselhoeft, Notary Public in and for the State of Washington, residing at Seattle.

[fol. 1955]

[File endorsement omitted]

In the Superior Court of the State of Washington For King County

No. 30967

STATE OF WASHINGTON, Plaintiff,

VS.

DAVID D. BECK, a/k/a Dave Beck, Defendant.

No. 30966

STATE OF WASHINGTON, Plaintiff,

V8.

DAVE BECK, JR., Defendant.

Appidavit in Support of (1) Motion for Continuance and (2) Motion for Reconsideration of Motion to Strike From Calendar—Filed October 2, 1957.

State of Washington, County of King, ss.:

Charles S. Burdell, being first duly sworn upon oath, deposes and says:

- (1) That he is the attorney for Dave Beek and for Dave Beck, Jr. in the above entitled cases; that he makes this affidavit in support of the motion for continuance in the above entitled cases and in support of the motion for reconsideration of the motion to strike said cases from the trial calendar;
- (2) That the previous steps taken in these cases are as follows:

The indictments herein were returned by a grand jury on or about July 12, 1957. At the date set for the arraignments affant was absent from Seattle, in Fort Leavenworth, Kansas. Affant's associate counsel, William Wesselhoeft thereupon moved for a continuance of the arraignment dates. These motions were denied. The defendant Dave Beck was thereupon arraigned on July 26; [fol. 1956] and the defendant Dave Beck, Jr. was arraigned on July 30. Upon arraignment each of the defendants entered a plea of Not Guilty, but was granted a period of thirty days from the date of arraignment within which to file motions directed against the indictments herein.

After the arraignment, each defendant filed a motion for permission to examine a transcript of the grand jury proceedings, alleging that certain irregularities had occurred in connection with the impanelment of the grand jury and during the proceedings of the grand jury, and stating further that a transcript of the proceedings would be necessary upon which to base motions to set aside the indictments. These motions came on for hearing before Judge Donald Gaines on August 12, 1957. In the course of this hearing affiant suggested that the motions might best be heard by Judge Lloyd Shorett, who had been in charge of the grand jury. A discussion on this point was then had, particularly considering the fact that Judge Shorett was then on a vacation, and further considering the fact that a delay in determination of this motion might require an extension of time within which the defendant might file motions to set aside the indictment.

In the course of the aforesaid discussion before Judge Gaines, Mr. Laurence D. Regal, Deputy Prosecuting Attorney stated as follows:

"... I think maybe Judge Shorett should hear the matter. Time is not important in this. (Italics supplied).

"No, there is no hurry. I don't think there is that much rush on that [this?] thing."

At the conclusion of the aforesaid discussion, Judge Gaines referred the motions for examination of the grand [fol. 1957] jury transcript to Judge Shorett, and set said motions for argument before Judge Shorett on Friday, September 13, 1957; and it was further agreed that the time for filing motions to set aside the indictments would be extended for a reasonable period after the argument and ruling on said motions;

Shortly prior to September 13, 1957 affiant's office was notified that the argument before Judge Shorett was to be held on Monday, September 16, rather than on Friday, September 13. This continuance was not requested by

affiant.

Pursuant to the above proceedings, argument upon the motions for examination of the grand jury transcript was held before Judge Shorett on the afternoon of September 16, 1957. At the conclusion of said argument Judge Shorett denied the motions, except insofar as they related to proceedings of the grand jury which took place in open court; and said open court proceedings have accordingly been transcribed and were delivered to affiant

on or about September 19, 1957.

After the aforesaid decision, affiant advised Judge Shorett that he had not interrogated any of the witnesses who had appeared before the grand jury because affiant believed, in view of the general rules of secrecy which surround grand jury proceedings, that there might be some impropriety in doing so without permission of the court. Affiant further advised the court that there were some witnesses who believed that they were not entitled to talk to affiant. In this connection, affiant had in fact been told by certain witnesses that they had been advised in the course of their testimony that the proceedings in the grand jury room were to be regarded as secret.

Thereupon the following proceedings took place before

Judge Shorett:

[fol. 1958] The Court: Well, certainly these witnesses are indorsed on the indictment, aren't they?

Mr. Regal: Yes, they are.

The Court: (To Mr. Burdell) It would not only be your right but your duty to know a little bit of what those witnesses are going to testify about before you went into the trial.

Mr. Burdell: That's right.

Mr. Regal: There are some witnesses who appeared that are not indersed or the indictment that I feel counsel has every right to talk

The Court: Even those who aren't indorsed, he has the

right1

Mr. Regal: Oh, definitely. Those who are indorsed, as you say, it is his duty to talk to them; they are people who are going to be called as witnesses in the case.

In the course of the discussions relative to the above subject, affiant advised Judge Shorett that some of the witnesses who had appeared before the grand jury had left or were about to leave for Miami, Florida to attend the convention and pre-convention activities of the International Brotherhood of Teamsters.

Thereupon Judge Shorett extended until October 19, 1957 the time for filing motions directed against the indictments, and an order to this effect was subsequently entered. In the course of discussions on this point, affiant advised Mr. Regal that this extension of time for filing motions would not be used by affiant as grounds for delay of the trials herein, but affiant stated that there were other grounds upon which he would resist an early trial.

[fol. 1967]

[File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY No. 30967

STATE OF WASHINGTON,

Plaintiff,

V8.

DAVID D. BECK, a/k/a DAVE BECK,

Defendant,

No. 30966

STATE OF WASHINGTON,

Plaintiff,

V8.

DAVE BECK, JR.,

Defendant.

Exhibits on Motions—Filed October 2, 1957.

[fol. 1968]

AFFIDAVIT

STATE OF WASHINGTON :

88

County of King

CHARLES S. BURDELL, being first duly sworn on oath, deposes and says:

That he is the attorney for each of the defendants in the above entitled cases;

That this compilation consists of newspaper and magazine articles, and references to television telecasts; that the newspaper articles were selected from the Seattle Times and from the Seattle Post-Intelligencer; that these are the only two daily newspapers of general circulation in King County; that the compilation was assembled at

the direction of affiant and that all articles are accurate reproductions of or references to news reports; that the circulation of the *Post Intelligencer* in King County is approximately 133,000; that the circulation of the *Times* in King County is approximately 180,000;

That in addition to normal circulation, copies of said newspapers are prominently and regularly displayed at newsstands throughout Seattle at locations where the general public will observe and read the large type headlines printed on the first page of said newspapers; that affiant has personally observed many persons pause to read headlines concerning the defendants herein, and has heard many persons, on doing so, make remarks indicating that they accept as true the reports appearing in said news reports and/or headlines;

That in addition to being circulated in King County, the aforesaid newspapers are sold and distributed in other towns and cities throughout the State of Washington, in[fol. 1969] cluding, but not limited to, the cities of Bellingham, Everett, Tacoma, Olympia, Vancouver, Yakima, Wenatchee, Spokane, Pasco, Kennewick, Richland, Spokane and Bremerton;

That the magazine articles included in the aforesaid compilation are selected from magazines having wide circulation throughout the United States, and throughout the State of Washington;

That the attached compilation does not include all newspaper reports and magazine articles written and distributed in the State of Washington concerning the defendants herein; that this compilation is illustrative only; that there were thousands of additional and similar reports published in the Seattle Post-Intelligencer, the Seattle Times, and in other daily newspapers published in and circulated throughout the State of Washington; that of the thousands of such articles and reports affiant knows of none which suggest that opinion be reserved pending trial of charges against the defendants;

That simultaneously with the circulation of such newspaper reports and magazine articles there were continual broadcasts and telecasts throughout the State of Washing-

ton and particularly in the Seattle-Tacoma Area of reports similar in nature and content to the reports and articles contained in the attached compilation; that such broadcasts and telecasts were often repeated several times daily; that practically all of such reports were adverse to and disparaging of the defendants herein; that, as an illustration, during the period from May until the date of this affidavit, the defendant Dave Beck was characterized in said reports as dishonest, as a racketeer, and as a person who "stole" money from and otherwise defrauded the labor union of which he was president; that to affiant's knowledge no broadcast or telecast suggested that opinion [fol. 1970] should be reserved until trial of the charges against the defendants herein; that publicity of the type referred to herein has been so constant and repetitious throughout the country and throughout the State of Washington, and particularly in King County, that it is referred to as "saturation" coverage—that is, news coverage designed, by one or another media of news transmission, to reach the maximum proportion of persons in a given community; that it is well known in public relations and advertising professions that the repeated dissemination of such reports strongly tends to persuade the general public that such reports are true; that affiant is advised and believes, and therefore avers, that a tremendous proportion of the population of the State of Washington, and particularly of King County, does believe these reports to be true;

That many of the reports, articles, broadcasts and telecasts included in the attached compilation, together with many which are not included, related to hearings before a special United States Senate Committee; that this Committee caused many of these hearings to be broadcast and telecast; that pursuant thereto there was broadcast and telecast throughout the State of Washington during the months of April and May 1957 much "testimony" of a nature bitterly hostile and adverse to the defendants; that this "testimony" was not limited by rules of evidence and was not subject to cross-examination; that films of these hearings were made and flown immediately to the Seattle-Tacoma Area for telecast, at

hours selected for maximum observance throughout Western Washington;

That in the course of the aforesaid hearings both of the defendants herein were required to appear; that at the time of such appearances the said defendants were being investigated by other agencies of the United States; and that, upon the advice of their attorneys both of said [fol. 1971] defendants exercised the privilege accorded to them under the 5th Amendment to the Constitution of the United States and refused to testify; that reports of such refusals were widely circulated throughout the State of Washington, particularly in King County, by means of news reports, broadcasts and telecasts; that in the course of these proceedings certain members of the aforesaid committee expressly and by clear implication indicated that anyone who claims or asserts privilege is guilty of something; that a study released by the American Institute of Public Opinion, on or about May 9, 1957, indicates that most Americans believe that anyone who asserts privilege under the 5th Amendment is guilty of something;

That in Volume No. 37 of Congressional Quarterly, for the week ending September 13, 1957, there is a report of a survey to determine the issues of greatest importance throughout the country; that the report states that the issue sixth in importance is "Labor union corruption and ways of regulating it"; that the aforesaid Congressional Quarterly is privately published at 1156 Nineteenth Street, N.W., Washington, D.C., but is an authoritative and accepted publication devoted to national issues and governmental activities;

That affiant has consulted with approximately fifty members of the Bar in Seattle and elsewhere in the State of Washington; that none of said attorneys have any connection with or obligation to either of the defendants herein; that without exception all of said attorneys have stated that in their opinion it would be impossible for either of the defendants to be accorded a fair and impartial trial in this jurisdiction or in any jurisdiction within the State of Washington at the present time or in the near future.

SUBSCRIBED and Sworn to before me this 30th day of SEPTEMBER 1957.

/s/ Donald McL. Davidson Notary Public in and for the State of Washington, residing at Seattle.

[SEAL]

[fol. 1975]

AFFIDAVIT

STATE OF WASHINGTON :

: 88

County of King

CHARLES S. BURDELL, being first duly sworn on oath, deposes and says:

That he is the attorney for the defendant in the case of State of Washington v. David D. Beck, No. 30967, and for the defendant in the case of State of Washington v. Dave Beck, Jr., No. 30966;

That on September 21, 1957, at about 5:25 p.m., affiant heard and saw a program telecast from Station KTNT-TV; that said program consisted of an interview of two attorneys who purported to represent certain members of the Teamsters Union in legal proceedings to enjoin or delay an election for the presidency of said Union; that in the course of said interview, referring to the Teamsters Union and its present officers, one of said attorneys stated in substance that pressure was being built up against "dishonest" union leaders; and that referring to the same Union and its officers, the same attorney used the terms "goons" and "racketeers";

That said interview, in its entirety, was repeated on

Friday, September 27, 1957.

That station KTNT-TV is one of three television stations which are widely heard and observed in the Seattle-Tacoma area; that telecasts emanating from KTNT-TV, including news and interview programs, are generally heard and observed by many thousands of persons in Pierce and King counties, State of Washington.

/8/ CHARLES S. BURDELL

SUBSCRIBED AND SWORN to before me this 30th day of SEPTEMBER, 1957.

> /s/ Donald McL. Davidson Notary Public in and for the State of Washington, residing in Seattle.

> > [SEAL]

[fol. 1976]

APPIDAVIT

STATE OF WASHINGTON :

County of King

CHARLES S. BURDELL, being first duly sworn upon oath, deposes and says:

That he heard and saw the program "leet the Press" as telecast over station KING-TV on Sunday, September 22, 1957; that he is advised and believes and therefore avers that said program is widely and extensively viewed by families in King County and elsewhere.

That said program consisted of an interview with James Haggerty, an announced candidate for President of the

International Brotherhood of Teamsters.

That in the course of said interview questions were asked which included the assertion as a fact that Dave Beck had "mishandled funds" and had "brought the Teamsters Union into disrepute."

/8/ CHARLES S. BURDELL

SUBSCRIBED and Swonn to before me this 30th day of SEPTEMBER, 1957.

> /s/ Donald McL. Davidson Notary Public in and for the State of Washington, residing at Seattle.





BAD DAYS FOR DAVE BECK

he the first days of trajectory were being taken, the Transstern' president floor floor is an estimating matchined, out of enhanced a reach in fining. Coder floor, is the breater actional precident in 1962, the Transstant and required a peak membership of 1.3 million and arrandomly a floor gallien transsey. As the union floorished on had floor, he pratrial members had brought and provided him with a pulated home in Scattle. By six providing the private house in Scattle. By six providing the private houses have made him taking interestingly wealthy. (Last year be said properties worth \$PRINJERS)

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[fol. 2014]

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[fol. 2113] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

No. 30967

STATE OF WASHINGTON, Plaintiff,

VB.

DAVID D. BECK, also known as Dave Beck, Defendant.

MOTION FOR CHANGE OF VENUE-Filed October 3, 1957

Now Comes the defendant, David D. Beck, also known as Dave Beck, by and through his attorney, Charles S. Burdell, and respectfully moves that the venue of the aforesaid action be transferred and removed from King County, State of Washington, to Whatcom County, State of Washington or Snohomish County, State of Washington, on the ground that it is and will be impossible for said defendant to obtain a fair, impartial trial in King County by reason of hostility and prejudice against the defendant existing among and throughout the population of King County.

This motion is based on the files and records herein and on the affidavit of Charles S. Burdell attached hereto and

made a part hereof.

Charles S. Burdell, Attorneys for Defendant.

[fol. 2114] [File endorsement omitted]

No. 30967

Appidavit in Support of Motion for Change of Venue —Filed October 4, 1957

State of Washington, County of King, ss.:

Charles S. Burdell, being first duly sworn, on oath, deposes and says:

That he is one of the attorneys for the defendant herein; that he has previously filed affidavits and exhibits in this case illustrating and referring to newspaper reports and other publicity media which have resulted in hostility and prejudice towards the defendant herein among and throughout the population of King County, State of Wash-

ington.

That affiant is advised and believes, and therefore avers. that similar publicity has been circulated and distributed throughout the State of Washington, and throughout the United States, and that there exists throughout said State and throughout the United States an attitude and atmosphere of extreme hostility and prejudice towards the defendant, but affiant is further advised and believes, and therefore avers, that such hostility and prejudice is less extreme and less intense in the counties of Whatcom and Snohomish, State of Washington, because there is only one television station located in Whatcom County, and none located in Snohomish County, and that television signals from stations located in King County reach a smaller proportion of the communities of Whatcom and Snohomish Counties than of King County; that newspapers published [fol. 2115] in King County have emphasized and prominently displayed newspaper reports of an adverse and disparaging nature to a greater degree than have newspapers published in Snohomish County and Whatcom County.

That affiant has observed and is advised, and therefore avers, that jury panels selected in King County, if not invariably, include employees of the Boeing Airplane Company: that within recent years there has been a bit-

ter jurisdictional dispute between the International Brotherhood of Teamsters and Aeromechanics Union concerning the right to represent employees of the aforesaid company; that affiant is advised and believes, and therefore avers, that said dispute has resulted in an attitude of bitterness, prejudice and hostility among employees of the aforesaid Boeing Airplane Company against officers and representatives of the International Brotherhood of Teamsters, including the defendant herein.

That in view of the foregoing circumstances, and other exhibits and affidavits on file in the above entitled case, affiant believes and therefore avers that although an attitude of hostility and prejudice against the defendant exists throughout the State, such attitude is less extreme and intense in Whatcom County and Snohomish County.

Charles S. Burdell

Subscribed and sworn to before me this 3rd day of October, 1957.

Donald McL. Davidson, Notary Public in and for the State of Washington, residing at Seattle.

[fol. 2115a] Clerk's Certificate to foregoing paper (omitted in printing).

[fol. 2125] [File endorsement omitted]

[Handwritten notation—Service of copy in Case 30966 waived—Charles O. Carroll, Prosecuting Attorney, By Charles Z. Smith, Deputy Pros. Atty.]

In the Superior Court of the State of Washington

FOR KING COUNTY

No. 30967

STATE OF WASHINGTON, Plaintiff,

VS.

DAVID D. BECK, a/k/a DAVE BECK, Defendant.

STATE OF WASHINGTON, Plaintiff,

DAVE BECK, JR., Defendant.

Appidavit in Support of Motion to Set Aside and Dismiss Indictment—Filed October 18, 1957

State of Washington, County of King, ss.:

Charles S. Burdell, being first duly sworn on oath, deposes and says that:

He is one of the attorneys for David D. Beck, also known as Dave Beck, and Dave Beck, Jr., defendants in the above entitled cases; and that he makes this affidavit in support of the motion of the aforesaid defendants to set aside and dismiss the indictments in the above entitled cases.

On or about February 26, 1957, a committee of the United States Senate commenced to conduct public hearings allegedly involving a relationship between the International Brotherhood of Teamsters and certain of its affiliated and subsidiary organizations, and certain alleged racketeers [fol. 2126] and criminal elements at Portland, Oregon;

Thereafter, continually until through September, 1957, the aforesaid committee held and conducted investigations and public hearings purportedly relating to alleged improper, dishonest and fraudulent activities by and among labor union officers.

In the course of the aforesaid hearings, many accusations of an adverse, disparaging and denunciatory nature were made against the defendants herein, and particularly against the defendant Dave Beck. Some of the accusations were made by members of the aforesaid United States Senate Committee, including particularly its chairman, Senator John McClellan, and by its chief counsel, Robert Kennedy; and in the course of said hearings, the aforesaid chairman issued and published a list of 52 specifications of alleged misconduct on the part of the defendant Dave Beck. Included also among the aforesaid accusations reported to have been made by the aforesaid chairman was the charge that the defendant Dave Beck "stole" several hundreds of thousands of dollars from the Interna-

tional Brotherhood of Teamsters.

The aforesaid accusations made by the United States

Senate Committee were based upon alleged "evidence" and "testimony," some of which was elicited in public in the course of the aforesaid proceedings, but none of which was subject to cross-examination by the defendants, or either of them, and none of which was subject to the rules of evidence normally applicable in judicial proceedings in courts of the United States or the State of Washington. [fol. 2127] During the aforesaid period, from February 26, 1957, throughout the month of September, 1957, representatives of the aforesaid United States Senate Committee, including particularly the chairman and chief counsel thereof, issued and published to the press and to other news media many statements and accusations of a denunciatory nature toward these defendants, many of which were not an integral part of the investigation or hearings of the aforesaid committee or necessary to its conduct or functions; and representatives of the said committee assisted, cooperated and conferred with law enforcement agencies of the State of Washington with respect to matters exclusively within the jurisdiction of said state, and otherwise engaged in conduct not necessary to or a part of the purpose and function of the aforesaid committee, and all of which were designed, intended and permitted to be circulated, by various publicity media, throughout the United States, and particularly throughout the State of Washington, and to create, and which did create, an attitude d intense and extreme bias, prejudice and hostility toward these defendants within the jurisdiction of this Court and elsewhere throughout the United States.

The effect and result of the aforesaid conduct is partially illustrated and demonstrated in a compilation of newspaper reports and articles referred to hereinafter. Included among such conduct are the following, among other instances:

Affiant is advised and believes, and therefore avers, that the chief counsel of the aforesaid Senate Committee, on or [fol. 2128] about April 11, 1957, conferred with Charles O. Carroll, prosecuting attorney in and for King County,

State of Washington.

Affiant is advised and believes, and therefore avers, that on or about April 12, 1957, the chief counsel of the aforesaid Senate Committee reported or stated to Governor Albert Rosellini that prosecution of officers of the International Brotherhood of Teamsters must be based upon state law because there was no applicable Federal law.

Affiant is advised and believes, and therefore avers, that on or about April 14, 1957, the chief counsel of the aforesaid Committee and Charles O. Carroll, the prosecuting attorney in and for King County, State of Washington, conferred by telephone concerning obtaining a transcript of the hearings of the aforesaid Senate Committee and concerning the possibility of an investigation under state laws of officers of the International Brotherhood of Teamsters; and on or about April 14, 1957 the prosecuting attorney of King County, State of Washington is reported in the Seattle Times to have stated to a representative or representatives of said newspaper that he discussed with the aforesaid chief counsel of the Senate Committee whether or not state action involving the defendant herein was advisable.

Affiant is advised and believes, and therefore avers, that on or about April 14, 1957, a conference was held between Charles Smith, a deputy prosecuting attorney in and for King County, and Carmen Bellino, an investigator for the aforesaid Senate Committee.

[fol. 2129] Affiant is advised and believes, and therefore avers, that on or about April 14, 1957, the chief counsel of the aforesaid Senate Committee stated that documentary evidence concerning officers of the International Brother-

hood of Teamsters would be furnished to the prosecuting attorney in and for King County, State of Washington.)

On or about April 26, 1957, the chief counsel of the aforesaid Senate Committee stated that the Committee stated/ that the Committee would assist the grand jury sitting in and for King County, State of Washington; and the chief counsel of the aforesaid Senate Committee is reported to have stated that he had confidence in the prosecuting attorney in and for King County.

Affiant is advised and believes, and therefore avers, that on or about May 16, 1957, the chief counsel of the aforesaid Senate Committee and Senator John Kennedy, a member of said committee, made comments concerning the absence of said statutes relating to the embezzlement of union funds and concerning the statute of limitations applicable in the State of Washington with respect to the crime of embezzlement.

Affiant is advised and believes, and therefore avers, that on or about June 23, 1957, Charles O. Carroll, the prosecuting attorney in and for the County of King, State of Washington, stated that the statute of limitations in the State of Washington prevented prosecutions based upon the investigations of the aforesaid Senate Committee.

On or about June 3, 1957 representatives or alleged representatives of the prosecuting attorney in and for King County stated to representatives of newspapers that [fol. 2130] defendant Dave Beck, Jr. was given an opportunity of explaining events which had previously been submitted to the grand jury, but that he declined the privilege of explaining and was excused by the grand jury.

On or about July 10, 1957, the prosecuting attorney in and for King County stated to representatives of the press that defendant Dave Beck, Sr. testified freely before the grand jury but that his testimony was limited and confined

as to subject matter.

At the outset of his appearance before the aforesaid Senate Committee on March 26, 1957, the defendant Dave Beck was accompanied by counsel; and upon advice of his counsel, the said defendant refused to respond to many questions, asserting the privilege guaranteed to him by

the Fifth Amendment to the Constitution of the United States. In asserting said privilege, the defendant explicitly stated to the Committee that his refusal to answer these questions was based upon nation-wide newspaper, radio and television accounts of the proceedings and upon proposed criminal actions against him for alleged violations of Federal laws. Nevertheless, after being so informed, the aforesaid United States Senate Committee repeatedly and continuously, during the course of the proceedings, posed questions to the defendant Dave Beck, which, upon advice of counsel, he refused to answer. The said committee caused or permitted these proceedings to be televised and broadcast by and through television and radio networks throughout the United States and said telecasts and broadcasts were transmitted over and by television and radio stations in Seattle, Washington, and were observed and heard by large portions of the popula-[fol. 2131] tion within the jurisdiction of this Court.

On May 2, 1957, a grand in a acting in and for the United States District Court for the Western District of Washington, Southern Division, returned an indictment against the defendant Dave Beck in two counts, charging

violation of Federal income tax laws.

On or about May 8, 1957, the defendant Dave Beck appeared for a second time before the aforesaid committee, accompanied by his attorney. At the outset of his hearings, the said attorney addressed the committee as follows:

"On May 2 of this year, this witness was indicted by a Federal grand jury, sitting in the Western District of Washington, for income-tax evasion. That indictment is now pending at this moment, and trial date has not yet been set, but an early trial is ex-

pected.

"I have canvassed the situation very carefully in the last few days since Mr. Beck retained me, and I want to call the attention of the committee that it is my belief and conviction that never before has a witness been called before a congressional committee who has been under indictment and interrogated about matters which can be possibily germane to the indictment. "Now, if Mr. Beck is interrogated today about any financial transaction whatsoever, or tomorrow, or whenever the committee may recall him, those financial transactions must of necessity be relevant and germane to the indictment in Washington, because the tax case out there, Mr. Chairman, was made on a net worth basis, and there may be income which is prorated back over the years to the year 1950 which is the taxable year in question.

"Now, in the light of that fact, Mr. Chairman, I am going to formally request that the appearance of this witness be deferred until such time as that tax case is adjudicated, because he finds himself at this moment

spiked on the horns of a dilemma.

[fol. 2132] "If he answers questions about financial transactions, he is, in effect giving the Government a pretrial discovery deposition before his trial. He is giving them the benefit of all of the evidence that may be relevant to his defense.

"On the other hand, if he seeks refuge in the Fifth Amendment, under recent decisions, that fact can be shown against him when and if he takes the stand in

his tax case in Washington.

"Now, I think that I should call this to the attention of the committee at the very outset. I think the Government must make an educated choice here. It must decide whether the tax case is more important or whether this hearing of this witness is important.

"Because, under the decisions, especially in the Delaney case in the First Circuit, where there was a comparable situation, the First Circuit Court of Appeals reversed the conviction against Delaney and held that the Government could not at once proceed in the judicial system by indictment and at the same time hold open hearings on matters relevant to the indictment.

"In the Delaney case, I hasten to call your attention to the fact, Mr. Chairman, Delaney was not called before the King Committee, but witnesses were called after his indictment concerning financial transactions.

"I say these things so that the committee will understand the position we are taking, because I think

candor requires me to say that I propose to recommend to counsel who handles the tax case in the Federal District Court in Washington that full exploitation be made of the defendant's rights under the *Delancy* decision.

"Secondly, I must say to you, Mr. Chairman, that if you do not defer this hearing that I must advise this witness to refuse to answer any questions, on the basis of the Fifth Amendment, which I deem to be relevant in any way to the matter pending in the Federal District Court in Washington.

"My formal request, Mr. Chairman, is that you defer his appearance until such time as his tax matter is

adjudicated. . . "

On or about June 4, 1957. Dave Beck, Jr., in response to subpoena, appeared before the aforesaid United States Senate Committee and was accompanied by counsel. The [fol. 2153] said defendant, upon advice of his counsel, asserted the privilege guaranteed to him by the Fifth Amendment of the Constitution of the United States. At the conclusion of the session at which said defendant appeared, members of the committee publicly stated as follows:

"The Chairman: If there is nothing else, the Chair would like to make this observation: I think on the Fifth Amendment that our founding fathers, I think in adopting it, had a noble purpose and a right purpose. I doubt if they ever conceived or could envision that the time would come when such flagrant abuse would be made of it as has been made during the course of these proceedings since this committee started public hearings, and particularly the demonstration of the abuse of it made here today.

"The chair has asked the witnesses, and other members of the committee and chief counsel have asked the witnesses, these questions, that apparently, and as I honestly believe, a truthful answer thereto could not possibly, in any way, come near, might, or otherwise,

towards incriminating the witnesses.

"I do not believe the Fifth Amendment was intended as a shield and as a protection for criminals. It was

to protect the innocent.

"I do not believe—and the Chair may be wrong, but I do not believe—that capricious use of the Fifth Amendment, when a witness says an answer might tend to incriminate him, I do not believe that he is entitled to invoke the Fifth Amendment unless he can also state on oath, and he is on oath when he testifies, without perjuring himself, that he honestly believes that if he answered the question truthfully the truthful answer might tend to incriminate him.

"If that can be done, I think we have to try to find out in this country, for the safety of our society, for the protection of human rights and human dignity, I think we have to find out—and I know of no way to find out except to place this situation, this record, before a court to determine even if it has to go to the

highest court in the land.

"Therefore, the Chair is going to order, with the permission of the other members of the committee, order and direct, the staff to immediately prepare contempt proceedings against these two witnesses. [fol. 2134] "If you are right in the position, you have taken here today, and the courts finally sustain your position, then America faces a great danger. Law enforcement can break down all over this country in every process, every judicial process, every investigating process, every quasi-judicial process.

"I think this is vital, this issue is vital, and it must

be settled.

"I regret to have taken that position, but this committee, in my judgment, would be derelict in its duty if it did not so recommend to the Senate, and the Senate would be derelict in its duty if it did not vote contempt proceedings against you. The committee, therefore, will proceed accordingly.

"Senator Mundt: Mr. Chairman, speaking for the Republican side of this committee, I would like to associate myself completely and emphatically with what

the Chairman has just said in the committee room this

morning, in the presence of these witnesses.

"I am perfectly confident that the committee will vote the contempt citation that the Chair has recommended, and I am equally confident that the United States Senate will support this motion when it comes to the floor of the Senate.

"I think the time is long past when we should have from the judiciary of the United States a clear-cut decision as to whether or not witnesses can come before our committee and utilize the Fifth Amendment in a completely irresponsible, frivolous and capricious manner. There is not anybody in the committee room, there is not anybody listening to these proceedings on the radio, who would doubt the fact that some of the responses we have had from these witnesses and from the other witnesses in utilizing the Fifth Amendment are efforts to deny information to the committee which, if provided, could not conceivably incriminate the witnesses utilizing the Fifth Amendment.

"I am confident our Constitutional forefathers never had that in mind. I am confident that the Legislative Branch of the Government and the people of America, if the courts rule that anybody can use the Fifth Amendment for any answer, without any basis in fact of incrimination, the people and the Congress have the power and the means, and can find the methods, for circumscribing that kind of frivolous use of the Fifth

Amendment.

[fol. 2135] "I say that despite the discouraging decision of the Supreme Court yesterday, when it gave a very severe setback to law and order and decency in this country by requiring that the law enforcement officials of the Federal Government disclose their secret files, their means of operation, and their methods of procedure, in dealing with Communists, subversives, espionage agents, and other criminals.

"Obviously, if we are going to continue to make easy the path of the wrong-doer, and to make impossible the procedures of law enforcement officials, Congress must step in and initiate the action which may have to ultimately be supported by the country as a whole through some kind of Constitutional amendment.

"I am confident that a country as strong as ours is not to be denied the capacity and the procedures and the powers required for its own self-interest and for

its own security.

"When you set up barriers of all kinds of legal technicalities, and Supreme Court decisions, which play into the hands of kidnappers and conspirators, play into the hands of bank robbers, counterfeiters, Communists and espionage agents, I think the time is here when Congress has to act affirmatively to protect America against that kind of interpretation of the law, and that kind of use of the Fifth Amendment..."

That among the proceedings which the aforesaid United States Senate Committee caused or permitted to be broadcast and televised and otherwise reported, there was included the proceedings at which Dave Beck and Dave Beck Jr., upon advice of counsel repeatedly asserted and claimed the privilege guaranteed to them by the Fifth Amendment; the said proceedings were reported, telecast and broadcast throughout the United States in newspapers and on television and radio networks, including newspapers circulated among, and upon television and radio programs observed and heard by, a large proportion of the population and community within the jurisdiction of this Court. [fol. 2136] All or most of the aforesaid events, including statements to the press by the prosecuting attorney in and for King County and by representatives of the aforesaid United States Senate Committee, have been reported prominently in newspaper and magazine articles and upon television telecasts and radio broadcasts. The compilation consisting of newspaper and magazine articles and references to television telecasts are illustrative of the adverse and denunciatory reports circulated concerning these defendants throughout the jurisdiction of this Court and elsewhere. Many of these articles were printed in the Seattle Times and in the Seattle Post-Intelligencer. Each of these newspapers has wide and general circulation

throughout the jurisdiction of this Court. The aforesaid compilation was assembled at the direction of affiant and all articles contained therein are accurate reproductions of or references to news reports.

The magazine articles contained in said compilation (with the possible exception of the magazine SIR) were selected from magazines having wide national circulation and wide and general circulation throughout the jurisdiction of this Court.

In addition to normal circulation to subscribers and other purchasers, copies of the aforesaid newspapers were prominently and regularly displayed at news-stands in Seattle and in other cities within the jurisdiction of this Court at locations where the general public would observe and read the large-type headlines printed on the

first page of said newspapers.

The aforesaid compilation does not include all news[fol. 2137] paper reports and magazine articles written
and circulated concerning the defendants within the jurisdiction of this Court. The compilation is illustrative only
and there were many additional and similar reports published in and circulated throughout the jurisdiction of
this Court. Of the thousands of such articles and reports,
affiant knows of none which suggest that opinion of the
community concerning the guilt or innocence of these defendants should be reserved pending trial of the charges
which have been made against them.

The proceedings of the aforesaid grand jury commenced on or about May 20, 1957; and the prosecuting attorney in and for King County designated two prominent Seattle attorneys, including a former mayor of Seattle and a vice-president of the Seattle Bar Association, to conduct or assist in the conduct of the grand jury proceedings. Considerable publicity attended the conduct of these proceedings, such publicity including reports concerning the selection of the aforesaid two attorneys, appearances before the grand jury of Dave Beck and Dave Beck, Jr., appearances of other employees of representatives of the International Brotherhood of Teamsters and its affiliated organizations, statements of the prosecuting attorney, a

request or recommendation to the United States District Judge by the Chairman of the aforesaid Senate Committee recommending a denial of an application made by Dave Beck to leave the jurisdiction of the aforesaid United States District Court; and other instances and conduct referred to herein and illustrated in the compilation of

news reports referred to above.

[fol. 2138] Affiant is advised and believes, and therefore avers, that many sessions of the grand jury, during the course of which testimony was elicited, were attended and conducted by the prosecuting attorney in and for King County, and by Laurence Regal, a deputy prosecuting attorney in and for the aforesaid County and by William O. Devin and Victor Lawrence, the attorneys designated as aforesaid to appear in and conduct the aforesaid grand jury proceedings. Affiant has been advised by witnesses who appeared before said grand jury that sessions of the grand jury were conducted in an intemperate manner and that in connection with testimony relative to the subject of the indictment herein favorable to the defendants. they were expressly and impliedly charged in the presence of the grand jury with concealing facts and falsely stating facts.

The aforesaid William O. Devin and Victor Lawrence attended most or all of the sessions of the grand jury during which testimony was given. Said attorneys were designated by the prosecuting attorney to perform services in aconnection with this particular grand jury investigation, and for no other purpose connected with or for the office of the prosecuting attorney. There was, to affiant's knowledge, no order or appointment of the aforesaid attorneys as "special" prosecutors by the Court, and the file of the Clerk of this Court relating to the grand jury proceedings contains no such order. Affiant is advised and believes, and therefore avers, that each of the aforesaid attorneys continued to engage in the private practice of law during [fol. 2139] all or a portion of the period of their service in connection with the said grand jury proceedings. Affiant is also advised and believes, and therefore, avers that each of the aforesaid attorneys were paid for their services from a special fund appropriated or allocated by the Commisstoners of King County specifically for use in connection with the conduct of the proceedings of the aforesaid grand jury. Affiant is also advised and believes, and therefore avers, that upon the return of the indictments referred to hereinafter, both of said attorneys discontinued performance of any services or duties in and for the office of the prosecuting attorney.

On July 12, 1957 the aforesaid grand jury, acting in and for the County of King, State of Washington, returned an indictment against Dave Beck, consisting of one count, charging the said Dave Beck with the crime of Grand Larceny; and on the same date, said grand jury returned an indictment against Dave Beck, Jr., consisting of two counts, charging, in each count thereof, the crime

of Grand Larceny.

After the return of the indictment herein, the grand jury caused to be filed in the office of the Clerk of this Court, in a file which is open to and available to the public, and which has appeared in part in newspapers of wide circulation in the Seattle area, namely the Seattle Times, dated July 12, 1957 and the Seattle Post-Intelligencer, dated July 13, 1957, a mimeographed report and recommendation signed and purportedly prepared by the members of the grand jury, and that said report and recommendation is attached hereto and made a part hereof by this reference as though set forth in full.

[fol. 2140] Both before and after the return of the indictments, the King County Prosecuting Attorney, Charles O. Carroll, issued statements to the press praising the efforts of Mr. Lawrence and Mr. Devin who were purportedly appointed as assistant prosecuting attorneys for grand jury purposes. These statements said that both had extensive private practices and had done or are now doing this work at great personal sacrifice to them-

selves.

Affiant is advised and believes, and therefore, avers, that in connection with the qualification, selection and impanelment of the grand jury, and at all times throughout its proceedings, no steps were taken to exclude from the grand jury any person or persons who entertained an attitude of bias, prejudice and hostility toward the

defendants by reason of knowledge of the aforesaid facts or by reason of belief or opinion gathered from the widespread circulation of publicity with respect thereto, and no steps were taken to instruct or direct the grand jury to ignore or disregard the reports circulated, as referred to above, or to disregard any attitude or opinion which they might have formed as a result thereof; except, however, affiant is advised that an oath was given to the members of the grand jury, at the time of impanelment thereof, but affiant is not presently advised as to the nature and content thereof.

Charles S. Burdell

Subscribed and sworn to before me this 17th day of October, 1957.

Virginia H. Berk, Notary Public in and for the State of Washington, residing at Seattle.

[fol. 2141]

[File endorsement omitted]

In the Superior Court of the State of Washington,
In and For the County of King
No. 104594

IN THE MATTER OF THE KING COUNTY GRAND JURY

REPORT OF THE GRAND JURY-July 12, 1957

In the charge given to us by the Court on May 20, 1957 we were instructed to investigate the following matters:

- 1. The activities of the officers of the Teamster Union and affliated unions.
 - 2. Conduct of public officials.
 - 3. The state and condition of the County Jail.
- 4. Such other matters as would be brought to our attention by the Prosecuting Attorney.

Evidence was presented to us of the following subject matter:

- 1. Operations of the County and City jails.
- 2. Collection and disbursement of office funds of County offices.
- 3. Contributions and disbursement of funds in connection with Initiative 198.
- 4. Operation and procedures of License Division of Comptrollers Office of City of Seattle.
- 5. Conduct of the affairs of the International Brother-hood of Teamsters, Western Conference of Teamsters, Joint Council No. 28, Joint Council No. 28 Building Association, Local 174 Teamsters Union, and the particular acts of the officers and employees of said organizations which were within the jurisdiction of King County, Washington.
- 6. Many letters, telephone calls and reports were received by the Grand Jury some of which were totally unrelated to the subject matter with which the Grand Jury was charged to investigate. Nevertheless each report was considered and when deemed necessary it was acted upon.

From the evidence presented, we make the following observations and recommendations:

[fol. 2142]

Jails:

The County and City jails appeared to be operated in a lawful manner and in compliance with the rules as laid down by the Superior Court.

Office Funds:

All elective County Officials were examined regarding their office funds. Most of the offices examined maintained office funds to which contributions were voluntarily made by practically all employees in varying amounts, which funds were used for charitable and similar demands made of the office and in some instances for campaign expenses of the office candidate.

Recommendation:

It is our recommendation that all such office funds, if maintained, continue to be collected only upon a voluntary basis from employees; and that they be deposited in a separate bank account not in the name or under the control of the elected official.

Initiative 198:

The evidence presented indicated that the Teamsters Union received large sums of money from out of state to defeat Initiative 198, which appeared to be in direct violation of R.C.W. 29.79.496. On the other hand, because of the broad wording of the statute in question, other labor organizations that opposed Initiative 198 and the proponents of the Initiative technically also appeared to be in violation of this statute, even though the evidence clearly indicated that an effort was made on the part of these latter parties to comply with this statute.

Recommendation:

In view of this, we have returned no indictments in this matter, but we strongly recommend that the law be amended to make it more definitive and more practical of enforcement.

[fol. 2143]

Teamsters:

The powers granted to the President by the Constitution of the International Brotherhood of Teamsters are extremely broad. Likewise the powers granted to the President and Executive Board of the Western Conference of Teamsters are very broad. There is placed within the hands of the Chairman of the Western Conference of Teamsters with the approval of the Executive Committee the almost unlimited power to use the funds of the Western Conference of Teamsters for any purpose whatsoever. Coupled with this

sweeping grant of authority is the fact that very few, if any, meetings of the Executive Committee were ever held, and furthermore the authorization of the Executive Committee, under the terms of the Constitution of the Western Conference of Teamsters, could be obtained by telegram or telephone and without a meeting of the Executive Committee. This created a situation whereby the Chairman of the Western Conference of Teamsters had practically unlimited legal power to use the funds of the Western Conference of Teamsters in any way he saw fit.

No member of the Executive Committee or Policy Committee who testified or with whom we were able to talk would admit that the Chairman of the Western Conference of Teamsters ever used the funds of the organization without authority.

The books and records of the Western Conference of Teamsters prior to 1954, as reported by the officers of the Western Conference of Teamsters, were destroyed. The period within which a charge of embezzlement can be filed in this State is three years; [fol. 2144] consequently, all acts which occurred prior to mid-1954, even though criminal in nature, under our statute would be outlawed. Despite the fact that one of the main purposes in calling the Grand Jury was to discover the wrongful use or misappropriation of Teamster Union funds, the Grand Jury met with resistance and indifference from within the union itself.

From the evidence we were able to gather, the only indictable offenses discovered were those involving the sale of automobiles of the Western Conference of Teamsters and Joint Council No. 28 by Dave Beck and Dave Beck, Jr., and the conversion of the proceeds of such sales to their own use.

For these offenses indictments were returned.

Recommendation:

It is our recommendation that legislation be enacted which will (1) protect the property and rights of the beneficiaries of union funds and which will require a stricter accounting of funds paid by members of a labor union and other organizations as dues, and that such officers or persons having the custody or control of such funds be held to a similar degree of accountability for such funds as corporate officers are held accountable for funds in their possession or under their control;

(2) extend the statute of limitations on offenses of the officers or persons having custody or control of such funds from three to ten years, so that the statute of limitations will be the same as for offenses by public officials;

[fol. 2145] (3) require that a periodic statement of receipts and disbursements of such funds be made and a copy thereof made available upon request by any member of such organization or beneficiary of such fund;

(4) make unlawful the use of such funds by any officer of the organization for his personal benefit.

License Department:

Evidence indicates that the City of Seattle has lost substantial sums of punch-board tax revenue. There was no credible evidence to warrant the finding of an indictment against any present or former official or employee of the City, or against any other person not already convicted. There is, however, ample evidence to indicate that the procedures used in the License Department of the Comptrollers Office in the regulation and collection of taxes on punch-boards have been lax and inadequate resulting in the loss of large sums of punch-board tax monies due the City Treasury.

Recommendation:

It is recommended that, in addition to the improvements recently adopted by the License Department, steps continue to be taken by the License Department, and such officials or bodies of the City of Seattle as are charged with that responsibility to recover past or to forestall future loss of revenues.

Liaison Between Federal and Local Government Agencies:

There appears to be a lack of coordination between law enforcement agencies of the Federal Government and those of the State and Local Governments. Had the local enforcement agencies been advised by the [fol. 2146] Federal Internal Revenue Agency in 1953 or 1954 of the apparent misappropriation of union funds by certain union officials, proper legal action could have been taken before the Statute of Limitations ran against those offenses.

Recommendation:

It is recommended that closer liaison be maintained by the law enforcement agencies of the Federal Government with those agencies of the State and local Governments.

Grand Jury Procedures:

It is recommended that the law covering Grand Juries be studied with a view towards modernizing procedures and clarifying the powers and duties of the Grand Jury, the Prosecuting Attorney and the Court with reference to Grand Juries.

Dated this 12th day of July, 1957.

Andrew C. Dalgleish Foreman of the Grand Jury

Russell D. Webb C. W. Scott Alma Kottsick Genevieve James Floyd H. Raymer M. Edythe Dennis George P. Ostroth Reginald E. Washington

Bobertson Coit
Opal Hill
Lewis W. Benson
W. D. Haley
Erwin M. Wallace
Roy A. Gamble
Arthur W. Hannes
Henry J. Brady

appeared before said Grand Jury in the course of the presentation of testimony and evidence thereto.

This motion is based upon the files and records herein, including affidavits of Charles S. Burdell and W. Wesselhoeft, relating to their information and belief concerning conduct of the Grand Jury proceedings.

Dated this 4th day of November, 1957.

Charles S. Burdell, Attorney for Defendants.

State of Washington, County of King, ss.:

Charles S. Burdell, being first duly sworn on oath, deposes and says:

That William F. Devin and Victor D. Lawrence attended

sessions of the Grand Jury prior to June 18, 1957.

That affiant is also advised and believes, and therefore avers, that the aforesaid William F. Devin and Victor D. Lawrence were engaged in the private practice of law throughout the period of time when they appeared before and performed services in connection with the Grand Jury and the Grand Jury proceedings; that affiant believes that this fact constitutes grounds for setting aside the indictment herein; that he desires to interrogate the aforesaid [fol. 2198] persons with respect to this subject.

That affiant believes that conduct which took place during the interrogation of the witnesses Jack Stratton and Fred Verschuren, Jr. before the Grand Jury constitutes grounds for dismissal or setting aside of the indictment herein, and that affiant desires to interrogate all of the witnesses named in the attached motion with respect to said conduct.

Affiant further certifies that in his opinion the testimony of the aforesaid witnesses is material to the defense in this case, with particular respect to the validity of the Grand Jury proceedings and the validity of the indictment.

Charles S. Burdell

Subscribed and sworn to before me this 4 day of November, 1957.

Virginia H. Berk, Notary Public in and for the State of Washington, residing at Seattle.

[fol. 2207]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

No. 30967

STATE OF WASHINGTON, Plaintiff,

-V8.-

DAVE BECK, SR., Defendant.

No. 30966

STATE OF WASHINGTON, Plaintiff,

-V8.-

DAVE BECK, JR., Defendant.

PROCEEDINGS BEFORE JUDGE SHORETT, NOVEMBER 7, 1957—On MOTIONS

The Court: Gentlemen, to avoid any misunderstanding in this case, or these two consolidated cases, I thought it best that we take them up in open court this morning and I think it proper to say that the other day we had understood that one-half day would probably be sufficient to complete these arguments. We all know we barely squeezed it into a full day and I think about the time we recessed at a quarter after 12:00, a little after noon, we were all

perhaps in a hurry to get away and there may have been some misunderstanding as to exactly what was intended. To avoid that, let us go over it a little bit now.

First, taking up the matter of the amended motion for [fol. 2208] the examination of documents. I think we are all clear now that Paragraph I of that motion, relating to the records of the Western Conference of Teamsters, Local 174, the Joint Council of Teamsters, No. 28, and the Building Association, being enumerated as subdivision 1(a), (b), (c) and (d) of that motion, were granted. The balance of that motion being II, with subdivision (a) through (w), were all denied.

Now, I understand from counsel this morning that the period of time granted by the Court, namely, one day from 9:00 o'clock in the morning to 5:00, is not regarded as sufficient to permit the type of examination required or desired and that because of the shortage of time, probably no more than two days would do the defendant any good, so that I am going to change that order and permit the defendant's examination of those particular documents contained in Paragraph I of this motion, (a) through (d), to permit the defendants or their representatives to inspect those documents from this morning at 9:00 o'clock until 5:00, and also tomorrow. During all the times of the inspection, a representative of the Prosecuting Attorney may be present.

Now, to go to the other matter which concerns the request of the defendants for a transcript of the testimony of Jack Stratton, given June 19, 1957, and the testimony of Fred Verschueren, Jr., given June 20, 1957, and again July 10, 1957. This motion was based upon Paragraph IV of the Motion to Set Aside and Dismiss the Indictment, reading in part that the proceedings of the Grand Jury, which returned the indictment, were conducted in an atmosphere of extreme bias, prejudice and hostility toward this [fol. 2209] defendant, and that said atmosphere was in part created by the Prosecuting Attorney and persons acting or claiming to act in his behalf, all of which was prejudicial to the defendant and which has denied and will continue

to deny him rights guaranteed under the XIV Amendment of the Constitution of the United States, Amendment X of the Constitution of the State of Washington, Article I, Section 3 of the Constitution of the State of Washington.

It is also based upon an earlier motion made for an inspection of the transcript regarding the testimony of all the witnesses and it is based upon an oral motion made by Mr. Burdell at the hearing for a transcript of the testimony of these witnesses and all of these motions are in turn based upon several affidavits which are in the file.

Now, coming to an analysis of the questions involved, it seems to me that it is this. Can such prejudice result to a defendant because of claimed intemperate conduct on the part of the prosecuting official before a Grand Jury that would deny the plaintiff, or the defendants, rather, any constitutional right guaranteed under the State or Federal Constitutions? Mind you, this is not one of the defendants that is testifying here. Now, these witnesses were employed by, or one of the witnesses was employed by the Teamsters Union or some affiliate of the Teamsters · Union. The other witness was engaged in the garage business or worked in a garage and I have read this testimony through and find in the testimony numerous references by one or more of the prosecuting officials to the statute on perjury, to a statement of claimed disbelief of the statements or testimony made by one of the other of these witnesses.

[fol. 2210] I find no indication in this transcript that either witness was persuaded to change any part of his testimony due to any assertion made by any prosecuting officials. Now, it seems clear to me that mere statements of this kind made to a witness which did not affect his testimony, cannot in any way be taken advantage of by the defendants in a criminal case against whom an indictment was returned. The defendants' presumption of innocence which he is accorded in common with every other defendant, remains just as strong at the time of trial as it did before he was ever indicted. The fact that some witness may have examined at length, cross-examined and even assuming that any intemperate statements may have been made toward.

that witness, or statement indicating disbelief in his testimony, certainly would not in my judgment be any violation of the particular defendant's rights, unless it could be further shown that the statements made by the prosecuting officials were in the nature of mental coercion which required and resulted in the witness testifying falsely to some matters.

Here we do not even have a case where the witness changed his testimony, much less that he testified to something falsely which might have resulted in an unfair or unjust indictment of the defendant who would not have been indicted in the absence of such false testimony. Now, let me give you an extreme example, which of course would never occur in America. Suppose a witness before a Grand Jury was tortured physically and as a result of that physical torture he gave false testimony which resulted in an indictment. Then I say that a defendant would have, or probably a right to have that indictment set aside, if that testimony was false. Suppose, however, that after such [fol. 2211] physical torture the witness never changed any of his testimony in any degree. Now, of course, he would have his remedy against the prosecuting officials in either a criminal or civil action but how has the defendant's rights been affected?

I think, gentlemen, I feel they were not affected in any way whatsoever. For that reason, after the inspection of this transcript, I am of the opinion that no testimony which contributed in any degree toward these indictments could possibly have been elicited as a result of any statements made by the prosecuting officials. Therefore, there has been no violation of the rights of the defendants in these cases and the motion for an inspection of the transcript of the testimony of these two witnesses will be denied. The transcripts have been prepared and will be available to the defendants in the event of any conviction and subsequent appeal, so that they may urge this ground before an appellate court. The transcripts will not be available until after the conclusion of the trials, the second trial in the Superior Court. Are there any questions?

Mr. Burdell: Not about that, your Honor. I have a

question about another matter.

The Court: Yes, sir.

Mr. Burdell: One matter that we did not rule on or that the Court did not rule on was, and I think again it was because we didn't bring it to the Court's attention, was the motion which I filed, I believe Monday or Tuesday, for subpoenas to be directed toward or to these two Grand Jury witnesses. Verschueren and Stratton, and—

The Court: Pardon me just a moment.

(Off the record.)

[fol. 2212] Mr. Burdell: I made a motion for subpoenas to be directed to four persons, again in connection with this Grand Jury proceeding, or in connection with the problem of the conduct before the Grand Jury. I don't want to waive that motion. On the other hand, in view of the Court's remarks and in view of the fact the Court has read the transcript, I assume that that will be denied.

The Court: Yes, sir. That will be denied; exception allowed, so that you may make your record on that and pre-

serve it for any possible need.

Mr. Burdell: Now, I don't think I have any other questions. I am just wondering now if I can change this order

over so that it will work.

The Court: I wonder if you would talk to Mr. Smith about it and agree between you. Gentlemen, I wish to say one other thing. I brought out with me State vs. Ingles to which we referred the other day and I had meant to mention it in my oral decision here. I may say just for the record that I have considered that case and the discretion that is imposed in the Court under the authority of that case in deciding this matter. Such discretion as I have, after reading the transcript, I wish to exercise in conformity with the decision I have given.

Very well, gentlemen, thank you very much.

[fol. 2213]

[File endorsement omitted]

In the Superior Court of the State of Washington

FOR KING COUNTY

No. 30967

STATE OF WASHINGTON, Plaintiff,

VS.

DAVID D. BECK, a/k/a DAVE BECK, Defendant.

MOTION FOR CONTINUANCE—Filed November 7, 1957

Comes Now the defendant David D. Beck, also known as Dave Beck, and respectfully moves for a continuance of the trial of the above entitled case for one (1) month, or to such other time as the Court deems sufficient to allow prejudice and hostility to subside, on the ground that there continues to exist throughout the jurisdiction of this Court, as a result of hostile and adverse publicity circulated throughout said jurisdiction relative to the defendant and relative to his associates, an atmosphere of bias and prejudice so extreme that it is and will be impossible, on the date now set for trial, for the defendant to obtain and secure a fair and impartial trial.

This motion is based upon all of the files and records herein, including the affidavit of Charles S. Burdell at-

tached hereto and made a part hereof.

Charles S. Burdell, Attorney for Defendant.

[fol. 2214]

AFFIDAVIT OF CHARLES S. BURDELL

State of Washington, County of King, ss.:

Charles S. Burdell, being first duly sworn, on oath deposes and says:

That there is being filed herewith copies of illustrative newspaper articles relating to the defendant Dave Beck, and relating to other persons who are known or believed throughout the community to be associated with him. That these articles are a continuance of publicity of the nature and type which has been circulated about and concerning the defendants herein continually since March, 1967. That similar publicity has been circulated by means of telecasts and broadcasts. That affiant is advised and believes, and therefore avers, that articles of this type (of which the articles filed herein are illustrative only and not inclusive of all such publicity) has resulted in an attitude of extreme prejudice and hostility toward the defendant Dave Beck and the defendant Dave Beck, Jr. and that it will thereby be impossible for said defendants to secure a fair and impartial trial at the dates upon which the cases are now set for trial.

That publicity of the type referred to above has resulted from an investigation and hearing conducted by a United States Senate Committee; that representatives of said committee, including particularly Carmen Bolino and Robert Kennedy, conferred with representatives of the Prosecuting Attorney shortly prior to the commencement of the grand jury proceedings herein; and that representatives of the Prosecuting Attorney, including Victor Lawrence, [fol. 2215] conferred in Washington, D. C. with representatives of the aforesaid Senate Committee.

That affiant is also advised and believes, and therefore avers, that at least one representative of the Prosecuting Attorney, namely William Marx, conferred with representatives of the United States Internal Revenue Service at or during the course of the grand jury proceedings.

That the aforesaid hearings of the United States Senate Committee were discontinued or postponed at some time in or about the month of July, 1957; that said hearings were resumed in or about the month of October, 1957; that the resumption of said hearings, and the attendant publicity at a time so near the date now set for trial of these cases, which hearings are expected to continue to and during said trial dates, will result in continued and increased hostility and prejudice toward the defendants as averred above.

That on November 6, 1957, an order was entered denying a motion made by the defendant herein to set aside the indictment; that said motion was based upon the ground that irregularities occurred in connection with the impanelment, selection, drawing and swearing of the grand jury, and upon the ground of misconduct of the grand jury and attorneys appearing before it. That affiant is advised and believes, and therefore avers, that said irregularities may have contributed to the hostility and prejudice against the defendants as aforesaid.

[fol/2217] [File endorsement omitted]

In the Superior Court of the State of Washington

FOR KING COUNTY No. 30967

STATE OF WASHINGTON,

Plaintiff.

VS.

DAVID D. BECK, a/k/a DAVE BECK,

Defendant.

EXHIBITS IN SUPPORT OF MOTIONS—Filed November 7, 1957

[Handwritten notation—Copy acknowledged, Charles Z. Smith, Deputy Pros. Atty. Nov. 7, 1957.]

In connection with the motion both Mr. Smith and I have a list of or a compilation of exhibits consisting of newspaper articles. Mine is entitled "Exhibits Filed in Support of Motion for Continuance", and I'll ask that that be filed. I assume Mr. Smith will file his in a few moments.

Now, your Honor, because of some haste in getting this matter to the court expeditiously, I haven't filed an affidavit in support of the motion, but I wonder if I could be sworn at this time and state what I do know concerning the grounds I have stated as reasons for the motion and have that, or my sworn statement, made a part of the record.

The Court: Any objection?

Mr. Smith: No objection, if this is a substitute for an affidavit which would have been filed by Mr. Burdell.

Mr. Burdell: That's what I intend it to be. The Court: Very well. Raise your right hand.

CHARLES S. BURDELL, was duly sworn by the court and made the following statements under oath.

Mr. Burdell: Now the statements which I am about to make, your honor, are in support of the motion for con-[fol. 2251] tinuance. Referring first to paragraph one of the motion, which refers to an attitude and atmosphere of hostility, I would like to state that with reference to that reason or ground for the motion I refer primarily to newspaper articles and affidavits which have previously been filed in the court and which, I believe, have previously been considered by this court by way of sworn statement in support of that motion or that reason. I will state that my inquiries throughout the community, which, of course, have not been or have not reached the point where they could be considered anymore than a mere sampling of opinion have elicited expressions from many lawyers, at least 50, to the effect that in their opinion there does exist an atmosphere of hostility toward the defendant Dave Beck at this time, and my inquiries among lawyers since the trial of the case of Dave Beck, Jr. have elicited again, without exception, opinions from at least 20 lawyers that the attitude of hostility toward the defendant Dave Beck

had been increased and emphasized by the results of the case against Dave Beck, Jr., and particularly by the radio, television, and newspaper publicity which was attendant

upon the trial of that case.

I will also say that in addition to lawyers I would say that I have talked to between 100 and 200 persons who are not lawyers and who, I believe, would represent a cross section of the persons within the community, at least persons from what we might call every social and economic level, and I can say without any exception, I have been told that in the opinion of the people to whom I have talked, it is impossible to obtain a fair trial for the

[fol. 2252] defendant at this particular time.

Reason No. 1 also refers to the fact that the attitude of hostility was engendered in part by the conduct of the office of the prosecuting attorney. That refers specifically to conduct at the time of the Grand Jury proceedings, and I think that conduct has already been made a part of the record. It refers primarily to statements of representatives of the prosecuting attorney's office concerning matters connected with the Grand Jury proceedings, the effect of a statute of limitations with respect to the possibility of indicting the defendant and things of that sort. I have no reference to any conduct on the part of the prosecuting attorney, or I know of no conduct on the part of the prosecuting attorney subsequent to the Grand Jury proceedings which would have engendered any attitude of hostility toward the defendant except, of course, the conduct of the prosecuting attorney in the course of the trial of Dave Beck, Jr. which so far as I am concerned was entirely proper except for the possibility of what I might later contend or later will contend was misconduct in the course of argument. However, the matters that I have in mind there in that connection I don't believe reached the public press. Of course, many details of the trial did reach the public press and in my opinion will contribute to the attitude and atmosphere of hostility which I believe does exist.

I have probably covered point two in connection with

my last remarks.

In point three, the ground stated there is that certain of the newspaper, television and radio reports relative

[fol. 2253] to the trial of the case against Dave Beck, Jr. were false and misleading and contributed to and emphasized an attitude and atmosphere of prejudice and hostility toward the defendant. I might state that at this particular time I could not state or am not prepared to state under oath that there were any false statements in the newspapers. There were I am sure, however, statements which because of the fact that they were reported out of context were without any question misleading. I have in mind particularly a headline in the Seattle Times which referred to a supposed contradiction in the testimony between Dave Beck and one Fred Verschueren, Jr., and there were a number of other headlines, which, while probably from the point of view of newspaper re-porting were proper and appropriate summaries of the stories, nevertheless were unquestionably misleading in the sense that they did not report the entire proceedings or the entire testimony to which they referred.

In some of the newspaper articles which we have on file there are a number of illustrations of the type of thing that I have in mind. For example, in the Seattle Times on November 17, 1955 there was a prominent article. It is on page 27 and page 28 of the compilation which I am filing, which referred at considerable length to the alleged efforts of the sheriff's office to find a witness who turned out to be witness for the defendant. There is a reference to the fact in this paper that Mr. Regal of the prosecuting attorney's office stated in open court that he was reluctant to call this witness as a witness for the State because the prosecution could not vouch for his testimony. There was a similar statement made by Mr. Regal which was [fol. 2254] reported elsewhere in the press prominently, and the absence or alleged absence of this witness Ver-schueren was to my personal knowledge reported on radio

and television.

This witness Verschueren was a witness for the defendant in the case against Dave Beck, Jr. Of course, it made no difference at that point so far as I know, because my advice at the present time is that the jury was properly confined and that newspaper and television and radio reports were not made available to the jury, but, of course,

the prospective jurors—undoubtedly many of them, and, again, of course, I am just stating in this connection a matter of opinion, but undoubtedly many of them saw articles of this sort, referring particularly to the efforts of the prosecution to obtain a so-called missing witness, and particularly I might point out that the statement of Mr. Regal that the prosecution would not vouch for the truth of the testimony of this witness is reported in bold letters in this article. The record already, of course, shows, and I am sure the court can take judicial knowledge of the fact that the Seattle Times is a newspaper which is prominently—

The Court: Are you still referring to this on page 27?
Mr. Burdell: Twenty-seven and 28. Mr. Regal's statement is on page 28, your honor. It is in the first para-

graph of bold type.

The Court: Yes. Go ahead.

Mr. Burdell: Of course, I am sure I can state that the Seattle Times is a newspaper which is distributed with a [fol. 2255] considerable degree of circulation throughout

the jurisdiction of this court.

Now, on page 27 there is further reference to this missing witness Verschueren, and again there is a statement about the fact that Mr. Regal conferred heatedly with Mr. Verschueren before today's session opened, and again 45 minutes later just before resting the State's case. Actually my information from Mr. Regal is that the conference was not a heated conversation.

In any event, again following that, there is the paragraph which states that Mr. Regal told newspaper men that he did not call Verschueren as a witness because he could not vouch for Verschueren's testimony. Verschueren, as I stated before, was a witness for the defense in the Beck Jr. case, and according to my present knowledge and plans will be required as a witness in the case against Mr. Dave Beck, Sr.

There is also testimony and reference in these newspaper articles to a so-called destruction of the books of certain of the union organizations which were involved in the Dave Beck, Jr. case and also will be involved in the Dave Beck, Sr. case. I might refer now to page 36,

again referring to this witness: Verschueren, and I am now referring to an article which was on the front page of the Seattle Times on November 20, 1957 in red headlines in which it is stated that "Witness Denies Concocting a Story for the Defense of Dave Beck, Jr.", and the story to which that headline referred was on the first page of the Seattle Times and refers to the fact or quotes a question by Mr. Regal in which he states, "Isn't it true that this is a [fol. 2256] story concocted by you and Mr. Beck who answered the charges here?" Now, Mr. Regal w s referring there to Mr. Beck, Sr. who is the defendant in the case which is now set for December 2.

Referring again to page 43 there is a headline in the Seattle Times, which, while it refers to Dave Beck, Jr., will, I believe, have reference and contribute to prejudice against Dave Beck, Sr. The headline is that Beck Jr. was unable to recall his activities as union organizer, and he is quoted as stating in response to a question, "I can't put my finger on any one thing", and that is the entire quote about his testimony with reference to his activities as a union organizer. In fact, of course, there was considerably more testimony than that concerning his activities as a union organizer, and while in the opinion of the reporter or the person who wrote the headlines with respect to this particular article he may, in their opinion, have been unable to recall his activities as a union organizer, as a matter of fact he testified at substantial length concerning it and testified at substantial more length than the one sentence which is quoted in the newspaper.

Then, of course, on page 47 there is a front page article which appeared in the Seattle Post-Intelligencer another newspaper which is circulated to a substantial degree

throughout the jurisdiction of the court-

The Court: What page did you mention?

Mr. Burdell: Forty-seven, your honor. On page 47 the defendant in the present case is quoted as saying that in the Dave Beck Jr. case if anyone did anything wrong it [fol. 2257] was he, that is the man who was or is the defendant in the case now set for December 2, and that article

was, as I say, on the front page under prominent headlines.

On page 57 there is an article which appeared in the Seattle Times, and I am not sure but I believe this was on the front page of the Seattle Times, which states in bold headlines a statement attributed to Mr. Smith here beside me in his closing argument, in which Mr. Smith argued to the jury that the Becks had quote obviously contrived unquote the story to explain away why the union did not receive the proceeds from the sale. Of course, that wasn't

testimony. That was Mr. Smith's argument.

On page 60 there is another article which appeared in the Seattle Times under a prominent headline which says, "Embezzlement Found in Sales of Union Autos", and the article there refers in general to the trial of Dave Beck, Jr., but refers from time to time through the article to Dave Beck, Sr. and the position which Dave Beck, Sr. was alleged to have played, or his alleged connection with the so-called embezzlement by Dave Beck, Jr., and in the course of that article there is a statement that several discrepancies between the testimony of Dave Beck, Sr. and Verschueren were noted or noticed apparently by the reporter.

Now, I have only referred to a few of the articles. I notice in one or two of the articles which Mr. Smith has filed there are also copies of articles which certainly will

contribute to the hostility against the defendant.

On the second page of his compilation, for example, there [fol. 2258] is an article which appeared in the Seattle Post-Intelligencer on Saturday, November 23, 1957, with the heading, "Beck Plans Big Member Campaign". That refers to the defendant who is now scheduled for trial on December 2. At the beginning of the article it states, "Boasting that 'money is nothing to us', Dave Beck Friday announced", etc. Of course, in the opinion of the writer it may have been a boast. Whether or not it actually was a boast, of course, is clearly a matter of opinion, but in any event it was reported to the public as a boast.

Again on page three of Mr. Smith's compilation, there is a reference to a fact that Mr. Beck and his associates may sell stock in the Grosvenor House, which is a large

apartment building in Seattle, and the story reports the building to be worth \$4,200,000.00 and indicating that the defendant Beck owns 19 percent of the corporate stock of that large apartment house.

Also on page six of the compilation put together by Mr. Smith there is a headline indicating that teamster aides seek to raise \$150,000.00 legal defense fund, and the story goes on-as you read the story you find that this is an announcement made by vice president-elect of the Teamster's Union and not any announcement made by Mr. Beck. the defendant herein, but, of course, the headlines indicate or would indicate to the public that the teamsters, including Mr. Beck, who is the president of the union, may have some large amount of money available for the defense raised somehow or other through the union. I am glad I am under oath. I can state to my knowledge there is no legal defense fund available for my services. My services are being paid [fol. 2259] for by Mr. Beck personally, and I have no knowledge of any defense fund, and so far as I know, no defense fund will ever be raised or is planned to be raised for the payment of any legal fees to be paid by Mr. Beck, Sr., in connection with my services in the case which is set for December 2.

On page two of our motion one of the grounds stated is that the proceedings in connection with the trial of the defendant Dave Beck, Jr., were prominently displayed on television and broadcast on radio. That ground is, of course, true. I saw many of the broadcasts myself personally and learned by reports from others of other broadcasts and reports. Dave Beck, Sr., was mentioned in the course of those reports, and references to his testimony were made during the course of those television and radio broadcast reports, and, of course, the verdict of the jury was reported on television and broadcast as well on radio, and I believe that this particular compilation of newspaper reports which I am submitting about the trial of Dave Beck, Jr., will indicate quite clearly that from a reading and examination of the stories one would draw the conclusion that Dave Beck, Sr., was at fault or committed some sort of misconduct which was part of or connected with the case against Dave Beck, Jr.

Also on ground number four on page two of the motion we have pointed out, and this is again something that I know, have personal knowledge of, that approximately 60 jurors of the present panel of the court, which is—

The Court: Mr. Pilgrim.

Mr. Burdell: (Continuing)—approximately 60 members of the present panel of the court were selected and sent to [fol. 2260] Judge Revelle's courtroom for examination as prospective jurors in the case against Dave Beck, Sr.

The Court: The reason I called Mr. Pilgrim back, I know we sent 40 initially. Is that statement correct that there was

a total of 60. Mr. Pilgrim† Do you recall !

Mr. Pilgrim: No, I believe they just used the 40, your honor.

Mr. Burdell: Well, Mr. Regal and I have discussed this. The Court: Did we ever send any more after the first 40? Mr. Pilgrim: No, I don't believe we did, your honor.

The Court: I don't recall that we did.

Mr. Burdell: If I am mistaken about that, I'll say Mr. Regal is also mistaken, because he and I discussed it and he is also mistaken. Then it would be 40. I would have to correct that. Oh, yes, and maybe this is where I got the information too. I am sure I discussed it with Mr. Regal, but in the newspaper, in the Seattle Times on Wednesday, November 13, page 18 of our compilation, the report is that 60 were sent to Judge Revelle's court for selection of the jury.

The Court: Yes. I saw that at the time in the Times, and knowing that they are almost always correct, I knew at the moment I read that in the Times that as of that moment

they were not correct, that the number was 40.

Mr. Burdell: Well, possibly my confidence in them is the thing that led me to state that there were 60 sent to

[fol. 2261] the courtroom.

In any event 40 were sent among the panel or selected from the panel which will presumably include prospective jurors in the case against Dave Beck, Sr. All of those persons, many of whom of course were not selected as jurors, some of whom were examined on voir dire and excused, were present when questions were asked which elicited the fact that Mr. Beck, Sr., had been under attack or under

a charge by a United States Senate Committee. Some of the questions elicited the fact that Mr. Beck had asserted the Fifth Amendment on one or two occasions in connnection with his testimony before the United States Senate Committee. Other questions elicited certain other statements referring to hostile opinion or hostile feelings toward Mr. Beck, Sr. Of course, we do not know whether or not for sure—I have been advised so by other attorneys—that during some of the voir dire examination there were jurors in the courtroom who were not called, that is who were not among the 40 who were sent down, but I didn't recognize any of them myself and would only be able to say that I had been told that.

On page No. 3 in paragraph five the reason there stated is that the trial of the case against Dave Beck, Jr., involved much testimony which will be and constitute a part of the case against Dave Beck, Sr. That I know to be a fact according to my present plans, and I believe that is probably true to some degree in the prosecution case, and, of course, the remainder of that paragraph indicates that the testimony to which I have reference was reported prominently in the newspapers, and I think it is quite clear [fol. 2262] that the reports of the testimony were certainly

extremely prejudicial to the defendant Beck, Sr.

In addition to those matters, as the court may know, there is now pending in the United States District Court for the District of Columbia an action brought by I believe 13 members of the International Brotherhood of Teamsters, a class action, an action purportedly brought on behalf of all the membership of the United Brotherhood of Teamsters. It is an action in which it is sought to enjoin the President-elect, James Hoffa, from taking office as president, the action being based on the alleged grounds that the election at the convention in Miami recently was improper or illegal with ineligible delegates and things of that sort. That action is also set, that is the action in the District of Columbia, is also set for trial on December 2, the same date that the defendant is set for trial in this court. The action in Washington, D. C. was set on December 2 not by any knowledge on my part, or, as a matter of fact, I have nothing to do with that action, nor was it set by any motion or request or agreement of Mr. Edward

Bennett Williams, who is the counsel for the International Brotherhood of Teamsters in Washington in that case. On the contrary it was set for trial by mandate of the United States Circuit Court of Appeals. This, by the way, is information which I have received from Mr. Edward Bennett Williams yesterday by telephone and which I confirmed again this morning from him by telephone.

He stated to me on the telephone on both occasions that the case being one of equitable jurisdiction and involving what we would call preliminary proceedings in equity, [fol. 2263] the case had been expedited and had been set by mandate of the circuit court of appeals and could not be

changed.

Mr. Beck. Sr. is a party to that action. He is President of the union: that is he is the current president of the union. He is an indispensable witness on behalf of the International Brotherhood of Teamsters, and I am also advised that the plaintiffs expect that he will be in Washington, D. C. and that the plaintiffs expect to call him as a witness. That case in Washington, D. C. was originally set for trial, I believe, in the latter part of November, and in a conversation at or about the time it was originally set, I advised Mr. Williams that I thought Mr. Beck could probably be in Washington the latter part of November. That was in connection with some sort of an arrangement which was being made to have all of the defendants and the parties and the indispensable witnesses in Washington by agreement of both parties. The case was later continued. I was advised by Mr. Williams, from late November until December 2, because of illness of some of the attorneys, and Mr. Williams advises me that the case at this point cannot be changed, that is the trial date.

Of course, that case, I might point out, is brought on behalf of all of the members of the International Brother-hood of Teamsters, and it involves, therefore, of course, many, many persons as well as the nominal plaintiffs, and I understand that several attorneys are involved in the case. I know that there are two attorneys representing the 13 nominal plaintiffs. I know that there are at least two representing the International Brotherhood of Team-[fol. 2264] sters. How many other attorneys there are in

the case I do not know.

Of course, I might point out that by reason of the fact that Mr. Beck is President of the union, and by reason of the fact that his case in Washington, D. C. has been filed, it has been necessary for him to spend considerable time in connection with his duties and in preparation of the case in Washington, D. C., and I can state to the court that he has had to spend much time there in connection with the preparation of that case when I would have expected him and did expect him to be in Seattle to assist me in the preparation of the case which is now set for December 2. As a matter of fact he is in Washington right now when I had naturally thought, and I believe without presuming too much, that I could expect to spend time with Mr. Beck between the completion of the trial against Dave Beck, Jr., and December 2.

The trial against Dave Beck, Jr., was completed at 9:00 o'clock last Saturday, and Mr. Beck, in order to attend to these matters in Washington—several matters—but particularly in order to attend to this case which is set for December 2 there, left Seattle last Monday morning, that is the Monday after the Saturday on which the jury came in on the Jr. case, and he is still there, and I have not had the time, not had an opportunity to consult with him during this period of time when I should have been consulting

with him.

I will say that by virtue of that fact and by virtue of the rather extended period of time which the Dave Beck, Jr., case took, and I believe it took longer than we expected it [fol. 2265] to take—I believe we were talking about, as I recall, possibly a substantial period of time to get a jury, but then about a three-day trial. Actually the entire trial lasted, I think, at least 10 days including one Saturday. Am I about correct on that, Mr. Smith?

Mr. Smith: Yes.

Mr. Burdell: Including two Saturdays I should say. That would be including the Saturday that the case was finally submitted to the jury, but by reason of those facts—well, I should also add this: That I am attorney for Mr. Beck in two cases involving violations of the federal income tax laws in the United States District Court in Tacoma. Those cases have required me to spend considerable time in connection with motions and other preliminary matters. Of

course, I think the court understands that there is always more to be done in connection with those things than one anticipates, and while I will say I have certainly been diligent in connection with the matter, and I have employed as much assistance as I could possibly get, taking into consideration the necessity of getting someone who is familiar with the basic background, I have definitely not, in view of the absence of Mr. Beck in these other matters, had an opportunity to prepare this case in the manner that it should be prepared to present a fair and competent defense and the type of a defense that the defendant is entitled to.

Undoubtedly this is a matter of opinion, but I believe I can state it almost as a fact, that there will be legal issues involved in the case against the defendant which were also involved in the case against Dave Beck, Jr. I am also sure [fol. 2266]—this is a matter of opinion, but I think I can almost state this as a fact—that certain of the testimony which was involved in the trial of Dave Beck, Jr., will be involved in the trial of Dave Beck, Sr., and I think for the benefit of both the State and the defendant it would be helpful and it would expedite the trial if we could obtain a transcript of that testimony. I may say I have ordered a

transcript of that testimony.

In conclusion, I think I have pointed this out, but again it is stated as a ground for our motion, on page five, paragraph 14—this I can state partly as a matter of opinion, but also as a matter of fact based upon an examination of these newspaper compilations—that certain of the testimony given in the case against Dave Beck, Jr., that is the testimony given by the defendant, must have been disbelieved by the jury in view of the verdict, and that testimony and the result and the indication that the testimony was disbelieved is made apparent in these newspaper compilations, and for this reason, if the court please, I request—I haven't stated the period of time for which I wish a continuance, but in view of the hostility, I believe that the case should be continued for at least a period of months, three months at least, in view of the situation now existing.

I might say that while I am still under oath, I am now expressing an opinion that it seems to me that in view of this rather striking publicity which we find illustrations of here it would be hard to conclude, I think, that the defen-

dant in this case would approach this trial with anything but a terrific attitude of prejudice against him, probably [fol. 2267] one at this point more extreme than has ever existed, and certainly that attitude has existed considerably and emphatically throughout the past three months, but in view of the fact that we have just completed one trial which had such prominence and such startling, let's say, colorful newspaper reporting, the situation right now would be worse than it has ever been, so that is the reason I ask for a substantial delay, but in any event, and I might say in the alternative I would request a continuance until I think January 6, at which time we will have some new jurors in any event. I understand we will have a new call which will mean that we will have at least, I think, onehalf of the jurors, it is my understanding, who will not have had service before and who will not have attended the voir dire interrogation of the Jr. trial.

I might point out that those jurors who did attend the voir dire examinations in the case against defendant, Dave Beck, Jr., so far as any instructions given them is concerned, have been permitted to circulate with the rest of the jurors at all times during the trial, and after they were present in the course of the voir dire examinations, and while we can't draw any presumptions about it—well, I think we can—I think we could almost presume that undoubtedly those jurors have conferred with other jurors concerning what they learned or what they heard or the nature of the case or the nature of the questions that were asked in the course of the voir dire examination, so as an alternative I ask for a continuance at least until January 6.

The Court: How long is it anticipated that the hearing in [fol. 2268] the Washington, D. C. matter which is sched-

uled for December 2 will last?

Mr. Burdell: I asked Mr. Williams that, and he said a continuance of two weeks would be sure to take care of it.

The Court: Have you concluded!

Mr. Burdell: I was just about to say that as a third alternative in view of this unfortunate situation in Washington over which we really have no control, I would request and do request a continuance of two weeks so that

Mr. Beck might attend that trial after which he will promptly return here and promptly be prepared to go on trial if the court decides that that is the reason for which a continuance should be granted. I might say in my conversation with Mr. Williams, when he said he thought two weeks would do it, I asked him what assurance he could give me of that, knowing of course that sometimes cases take longer than originally planned, and he said in any event he would arrange to have Mr. Beck's testimony given at such time that even if the trial were not over he could be excused and be back in Seattle at the end of the two-week period.

Now I have concluded.

The Court: Addressing myself to the first paragraphs of your motion, I am not at all impressed with your contention that Dave Beck, Sr., cannot have a fair trial in this community at this time. I believe arguments such as these do poor credit to the intelligence and fairness of the high-calibered jurors that we have in this community, and I am satisfied from observing the trial of cases for [fol. 2269] many years here and observing the type and quality of jurors that we have had, particularly in recent years and recent months, that it is possible to find 12 jurors who can give a defendant, including this defendant, just as fair a trial in December as one could be found to give him in May. I, therefore, will deny your motion for a long continuance.

I will hear from Mr. Smith on those contentions raised in paragraph six and the subsequent paragraphs of the motion.

STATEMENT BY MR. SMITH

Mr. Smith: Thank you. May it please the court, at the outset we would like to say that notwithstanding the fact that we did not object to Mr. Burdell's testifying under oath in lieu of an affidavit, for the record, the State would like to deny each and every statement and opinion Mr. Burdell might happen to have made for this reason:

Notwithstanding the fact that I would personally vouch for Mr. Burdell's veracity outside the court, we have no opportunity to go through item by item any statement

made by him in his testimony in lieu of an affidavit, and, therefore, we do not wish the record to appear that his

affidavit or testimony is uncontroverted.

With particular reference to the request by the defendant that he be given a continuance, a further continuance in this case, the State's position is still the same now as it was on October 7, 1957, when the first motion was made in this court, and as it was in November when the second motion for a continuance was made in this court, that to grant the defendant a continuance in this case will not serve the best interests of justice and is to serve [fol. 2270] only the purpose of delaying the orderly administration of justice in the courts of this State.

It is very definitely the opinion of the State that these motions for continuance are nothing more than an effort on the part of the defendant to delay ad infinitum the trial of this case. As we indicated to the court on October 7, 1957 there will naturally arise, if any continuance is given in this case, a conflict of jurisdiction between the State court and the federal courts. By statements made by counsel and by information which is on file in this case there is no reason to believe that there will not be a great number of cases arising in the civil courts of the states and in the civil and criminal courts of the federal courts against the defendant or other persons connected with his organization. For that reason, if for no other reason, the State does not feel that the fact that the defendant is named as one of the 14 or more or less defendants in a civil case in the federal court on December 2, we do not feel that that is sufficient to grant another continuance in this case, which continuance was granted originally at the request of the defendant and against the wishes of the State.

The defendant, as the court may recall, was given a continuance of approximately three weeks which accounts for the fact that the case is now set for trial on December 2, 1957. Defendant now comes into court and says, "I cannot be here on December 2, 1957, a date we asked for and received, because another case has been set for December 2," and we anticipate that this will happen every month that a continuance might be granted, so for that reason [fol. 2271] we do not feel that this is sufficient ground for

asking for a continuance in this case.

As far as the availability of the defendant is concerned for the preparation of this case, we feel that the court should take into consideration the fact that the indictment in this case was returned on July 12, 1957, which has been approximately five months and is nearing six months. The defendant at that time expected that his case would have gone to trial before December 2, and the court granted him an approximately three-week continuance to prepare his case, and it would seem to the State that if the defendant intended to prepare his case, he would have done it in the interim between July 12, 1957 and the present time, November 26, 1957, and that the fact that it is necessary for the defendant to be in Washington, D. C. or in New York, New York, or in Denver, Colorado is completely immaterial on the question of when he should go to trial in Seattle, Washington.

The defendant has countless times in public statements in court indicated that he is a very busy man, that he is an important public figure, and there is no showing that the defendant will be any less busy three weeks, three months, three years from now than he is now, and for that reason the State would like to resist any effort by the defendant

on this motion to get a continuance in this case.

Mr. Burdell: Might I say one thing, your honor, I just want to observe that I have considerable difficulty understanding how a continuance of two weeks, which is probably the third alternative I asked for, would in any way [fol. 2272] seriously interfere with the orderly administration of justice in this court. While it is true that the indictment was returned in July, I don't think counsel will say that he and I both have been wasting any time on the case during that period of time. We have filed a number of motions, some of which were put off to meet the convenience of the court, but were, I think with that exception the motions were prepared, filed and argued expeditiously. They were motions which counsel might say were frivolous, but they were motions which in all cases were believed by me in good faith to be motions which were necessary to be made on behalf of the defendant. There has been no wasting of time concerning that period. We have a very, very interesting and strong record on that point. The record shows

the motions, the arguments, the time which the other courts gave us within which to file the motions, and then I believe the only continuance which was granted to us in this case at any time was the continuance granted—as a matter of fact we were denied a continuance at the time of arraignment. We were denied continuances several times on preliminary matters. I believe the only continuance we got for anything was the continuance which this court gave us of, I believe, a few weeks—what was it—six weeks?

Mr. Smith: Three weeks.

Mr. Burdell: Three weeks. I believe at that time it was almost a continuance to meet my—I believe what the court had in mind was that it was a continuance to grant my own personal convenience because of the fact that I had become considerably involved in these two cases. [fol. 2273] I see no conflict at this point between the federal court jurisdiction and the State court jurisdiction which will exist two weeks after December 2. There is the conflict at this point which is not of my doing, but as I stated I am assured that there will be no conflict two weeks after December 2, and I can give the court assurances that from my point of view there will be no conflict at that time. Of course, at the time I will have no choice about it, anyway. If the case is set for trial at that time, that's undoubtedly when the case will go to trial, no matter what the conflict is.

The Court: Mr. Pilgrim, we are not set up for jury cases on the week of December 161

Mr. Pilgrim: Non-jury week, December 16.

The Court: There is not another jury week until Janu-

ary 6.

Mr. Burdell: January 6 is the date that seemed to me would—while it wouldn't meet the problem which I feel exists and which, while I know the court remarked that gives little credit to our jury system, I hope that that isn't something that is reported in the newspapers so that the prospective jurors have some prejudice towards me at the time of trial, but in any event I hope the court knows that I make these contentions in good faith and that I believe this to be the situation, so that in any event it would

seem to me that the date of January 6, while it wouldn't meet that problem which I believe to exist, it does solve the problem about the fact that many of the jurors will undoubtedly be the same jurors who have been here and will have discussed the situation or will even consist of people who were present during the interrogation of the [fol. 2274] jurors in the Dave Beck, Jr., trial, and then, of

course, that would also solve the problem which exists in

Washington, D. C.

The Court: Well, isn't there some substance to Mr. Smith's surmise or prediction that it is very likely that Mr. Beck will have business in some court somewhere almost any time we would set, and I say that merely because that having been head and still being head of a far-flung empire like the Teamster's Union it seems to me that there's at least a civil matter involving them in many states and many parts of the country a good share of the time.

Mr. Burdell: As a matter of fact, that is true, your honor, but we are not asking the court to take those ordinary things into consideration. It just happens that I have to appear for Mr. Beck in Judge Hodson's court tomorrow on a motion to show cause, which will probably take me a good part of the day, and which will probably consume time which I should be spending preparing for this case. It is not a matter that involves the State at all. but I haven't, up until your honor's question I haven't even suggested that as any reason for a continuance of this case, and, there are many other cases of that sort which we are not suggesting should be considered at all. If we wanted to bring in every case that involved Dave Beck, we could bring many, many, but for the reason the court suggested we are not doing that. We don't think that's material. We don't think that gives us any right to a continuance, but the only cases that Mr. Beck feels or that I feel on behalf of Mr. Beck should be considered in this mat-[fol. 2275] ter are No. 1, his income tax case—well, I'll put it this way:

We feel that there are three important cases which should be considered, and so far as I know, everyone has attempted, including the federal courts, to avoid any real conflict. Now, Judge Boldt, after consulting with me con-

cerning the dates of these two cases in this court, set April 14 as the date for the trial of Mr. Beck, Sr., in the income tax case. He set it back some substantial period of time for a number of reasons, but included among others was the reason that these cases were set for, or he thought these cases might be tried in November through January. That's the one case which is important, and there can be no conflict there.

The only other case that is important besides this case which we are now discussing is the case which is in Washington which is a case of very substantial importance and is not the ordinary type of case which we would ordinarily let interfere with the orderly procedures of this court. Most of the cases we wouldn't even mention to this court as being anything that should be considered, but since that case does involve an attack upon, well, actually it involves the welfare of the entire union, and as I understand it, there's some question of whether or not a trustee should be appointed for the union. I understand there is some difficulty or some problem about conducting the affairs of the union under these particular circumstances. Now, this is a matter, of course, which involves many, many people, and many, many union members who are not to be blamed, of course, or in any way affected by the difficulties that [fol. 2276] Messrs. Beck and Hoffa are having at this time. That case, we feel, is of considerable importance to the point of view of Mr. Beck, because he feels that he is right about it, but also it is important to the union, itself, and I am sure that Mr. Smith, who is representing the plaintiffs, expects to use Mr. Beck and has expected to use Mr. Beck as a witness.

Now, it is only those three cases that I have any concern about, and which I would urge on the court as being cases which should be considered in arriving at a determination of this matter.

The Court: Well, on the face of it I think the importance of the hearing in Washington may be conceded. On the other hand, it is a civil case and this is a criminal case. Generally speaking I think a conflict between a civil case and a criminal case should be resolved by requiring the civil case to yield the right of way to the criminal case.

Point No. 2, the date of trial of the criminal case here in Seattle was set, as I understand it, before the date of

this hearing in the equity case in Washington.

Point No. 3, the date of December 2, which was set by me on a motion in the granting of a continuance was a date suggested by you, yourself, Mr. Burdell, as an agreeable date for the trial at that time.

Mr. Burdell: Well, agreeable, except for the fact that

I wanted a longer period of time.

The Court: Oh, yes. After I had denied your motion for a long continuance until about May on this ground of hostility or hostile feeling, I then said that for your accommodation in the preparation of the case, I thought [fol. 2277] there was some merit to it and would give you the continuance, and after some colloquy I believe you stated in open court that that would be agreeable.

Mr. Burdell: I am quite sure I did.

DENIAL OF MOTION

The Court: So for those three reasons I'll deny your motion.

[fol. 2278] [File endorsement omitted]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

No. 30967

STATE OF WASHINGTON,

Plaintiff,

VS.

DAVID D. BECK, a/k/a DAVE BECK,

Defendant.

Exhibits Filed in Support of Motion for Continuance— Filed November 26, 1957 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

No. 30967

STATE OF WASHINGTON, Plaintiff,

VS.

DAVID D. BECK, a/k/a DAVE BECK, Defendant.

CHALLENGE TO THE PANEL—Filed December 2, 1957

Comes Now the defendant, David D. Beck, also known as Dave Beck, through his attorney Charles S. Burdell, pursuant to the provisions of RCW 10.49.030 and RCW 10.49.040; and challenges the entire panel, and each member thereof, of the jurors which have been selected and drawn and are available for impanelment as petit jurors in the above entitled case, for the following grounds and reasons:

- 1. Written instructions, intrinsic to the evidence and instructions which will be submitted to the petit jurors herein, have been circulated to or among all or some of the members of said panel;
- 2. Hostile and adverse publicity concerning the defendant herein, contributed to and engendered in part by the Prosecuting Attorney and the Grand Jury which returned the Indictment herein, has been circulated throughout the jurisdiction of this Court to such a degree that it must, as a matter of law, be considered to have affected the partiality of the members of the aforesaid-panel, and which has created throughout the jurisdiction of this Court, an atmosphere so prejudicial to the defendant that it is and will be impossible to impanel and select unbiased and impartial jurors, or jurors who can disregard or lay aside prejudice and consider the facts and evidence herein in an [fol. 2342] impartial manner, and that a trial under such circumstances and before such jurors would constitute a violation of the substantial rights of the defendant as guar-

anteed by the Constitution of the State of Washington and Constitution of the United States;

- 3. Members of the panel were present in the course of interrogation of the prospective jurors in the case of State of Washington v. Dave Beck, Jr., Cause No. 30966, during the course of which interrogations comments and statements prejudicial to the defendant herein were made, and during the course of which subjects were covered consisting of and including matters prejudicial to the defendant herein;
- 4. During the trial and after the trial of the aforesaid case of State of Washington v. Dave Beck, Jr. newspaper, television and broadcast reports were circulated throughout the jurisdiction of this Court, and said reports included comments and statements adverse to and prejudicial to the defendant herein, and such reports were circulated to such an extent and degree that they were heard and seen by members of the panel herein;
- 5. Certain members of the panel were selected as prospective jurors in the aforesaid case of State of Washington v. Dave Beck, Jr., and were challenged peremptorily by the defendant, who is the son of the defendant in the above entitled case;
- 6. The prospective jurors who attended the aforesaid interrogations in the case of State of Washington vs. Dave Beck, Jr., and jurors who have read and heard the newspaper, radio and television reports, as aforesaid, have communicated freely among themselves in the course of their jury service for the past several weeks prior to the trial date of the above entitled case.

Charles S. Burdell, Attorney for Defendant.

[fol. 2343] State of Washington, County of King, ss.

Charles S. Burdell, being first duly sworn on oath, deposes and says:

That he is the attorney for the defendant herein and that he makes this affidavit in support of the defendant's challenge to the entire panel as follows: That affiant is advised and believes, and therefore avers, that a set of written instructions has been delivered to all or any members of the jury panel; that members of the panel have read said instructions and have discussed said instructions among and between themselves; that affiant has personally observed members of the panel reading and discussing said instructions;

That said instructions included erroneous and improper statements which are prejudicial to the defendant herein and will impair his right to a fair and impartial jury;

That affiant was present at the interrogation of the prospective jurors in the case of State of Washington vs. Dave Beck, Jr. and conducted said interrogation on behalf of defendant; that there were forty jurors selected as prospective jurors in said case; that the thirteen who were finally selected as jurors, and alternate jurors, were permanently excused at the conclusion of the trial in the State of Washington vs. Dave Beck, Jr.; that the remaining jurors were present in the course of the interrogations, and have not been excused and are presently included on the panel; that in the course of said interrogations it was revealed that the defendant herein had been the subject of charges of improper and unlawful conduct by a United States Senate [fol. 2344] Committee and by others; and that it was also revealed that the defendant herein had been the subject of many hostile and prejudicial remarks and discussions throughout the jurisdiction of this court. That affiant, on behalf of the defendant, Dave Beck, Jr., who is the son of defendant herein, exercised seven peremptory challenges in the course of selection of the jury, and that the jurors so challenged remained on the panel for the trial of the case herein:

That during the course of the trial of State of Washington v. Dave Beck, Jr. there were constant newspaper, television and radio reports concerning the course of the trial, many of which were hostile and prejudicial to the defendant and indicated that the defendant had committed a wrongful and unlawful act or acts; that some, but not all, of the aforesaid newspaper reports are included in the file herein; that said reports were circulated prominently and to an extensive degree throughout the jurisdiction of this

court, and included large type headlines in the newspapers and many have come to the attention of the members of the panel herein;

That present members of the panel, including those present at the aforesaid interrogations and those who were the subject of peremptory challenge, were permitted to confer among themselves freely during the trial of the aforesaid case of State of Washington vs. Dave Beck, Jr.; that said case was the most prominent and publicized case which has been tried during the entire term of the present jury panel, and one of the most, if not the most, publicized case which has been tried within the jurisdiction of this court for many years.

[fol. 2345] Affiant also incorporates herein the records, affidavits and exhibits heretofore filed relating to and demonstrating the conduct of the Prosecuting Attorney, of the Grand Jury, proceedings relative to the impanelment of the Grand Jury; and affiant also incorporates herein by reference affidavits and exhibits relative to publicity circulated throughout the jurisdiction of this Court relative to

and concerning the defendant.

Charles S. Burdell.

Subscribed and sworn to before me this 2 day of December, 1957.

Virginia H. Berk, Notary Public in and for the State of Washington, residing at Seattle.

[fol. 2347] [File endorsement omitted]

In the Superior Court of the State of Washington

FOR KING COUNTY

No. 30967

STATE OF WASHINGTON, Plaintiff,

VS.

DAVID D. BECK, also known as DAVL BECK, Defendant

EXHIBITS-Filed December 2, 1957

Supplemental Statement of Facts

In the Superior Court of the State of Washington
In and for the County of King
No. 30967

STATE OF WASHINGTON, Plaintiff,

VS.

DAVID D. BECK, a/k/a DAVE BECK, Defendant.

PROCEEDINGS ON MOTION FOR ORDERS ALLOWING DEFENDANT TO PUBLISH AND INSPECT TRANSCRIPT OF GRAND JURY VOIR DIRE AND ALLOWING DEFENDANT TO PUBLISH AND INSPECT TRANSCRIPT OF SAID GRAND JURY PROCEEDINGS—August 12, 1957

APPEARANCES:

State of Washington—Charles O. Carroll, Prosecuting Attorney, King County; Laurence D. Regal, Deputy Prosecuting Attorney, King County.

Dave D. Beck-Charles S. Burdell, William Wesselhoeft.

[fol. 2398] Colloguy RE WHETHER OR NOT THIS COURT IS THE CORRECT COURT TO HEAR THESE MOTIONS

The Court: The point is I am not going to have any problems of that sort made if a day one way or another is not going to stop the wheels of justice here. If this matter should be properly before Judge Shorett and you feel so, I think that could be worked out.

Mr. Burdell: It seems to me from what I have read that, as I say, the court which had the grand jury in charge is the best court to decide any question which might relate, and

this is the foundation problem on that point, but the court which had the grand jury in charge is the best court to decide. He is the court who has observed the grand jury and its proceedings and its conduct. He is the one who instructed the grand jury. He is the one who presumably was present from time to time to observe the manner in which the grand jury was being conducted, who was present, what instructions he gave to the prosecutors or the grand jury concerning presence of persons before the grand jury. That court might know something about these questions as a matter of [fol. 2399] personal knowledge, which this court does not know.

It is quite similar to a situation where at the conclusion of a trial a petit juror is claimed to have engaged in some sort of misconduct. Of course, the trial judge is the best judge to know to what degree he observed the jury, to what degree he watched their conduct, how his bailiff conducted himself or herself, and so forth, things of that sort.

I gather from the one or two cases that I read that that's the theory under which these cases have indicated, that the court which had the grand jury in charge is the best

court to decide these things.

However, I just wanted to make this clear that if this court should decide this question adversely to either of the defendants in this case, then no ground or no claim will be made that there is any error in the fact that this court decided it instead of Judge Shorett. I bring this point up simply because I thought this court, or, possibly, the presiding court if these things were brought to the court's attention might decide that Judge Shorett is the best court to hear them and might decide that Judge Shorett would prefer to hear them, were he consulted. But I am not raising that as any motion or anything of that sort. I hope I have made myself clear.

The Court: Surely. In view of your remarks, I think I would like to hear from Mr. Regal as to his views on this.

If it should properly go before Judge Shorett, I would a

like to know it now rather than take up your time.

Mr. Regal: Your Honor, I think counsel's remarks about the judge having personal information regarding certain of the allegations in his memorandum, and so on, are ac-

[fol. 2400] curate.

I do feel that our supreme court in a few recent cases has looked to the justice of a cause rather than to technical rules. I don't think counsel for the defendants can waive certain protections of the law. It is very possible that even though counsel says to us now that he is not going to raise this point, it still will be an arguable point that will be in this record that will go before the supreme court if it goes that far, and it might be persuasive.

Mr. Burdell: Perhaps, some other counsel will be repre-

senting the defendant.

Mr. Regal: Or some other counsel.

The Court: That is right.

Mr. Regal: Counsel says, in his memorandum, and I know because of press of business had to have other counsel prepare his memorandum, there are no cases in point. That is not true.

There is a case of State v. Engles, where this question of whether or not a court can grant a transcript of the proceedings is discussed. You may look at it. I think the discretion should be exercised due to the comment of Mr. Burdell and not before that.

I was perfectly willing to have had this matter heard by your Honor. I think maybe Judge Shorett should hear the matter. Time is not important in this.

The Court: Yes.

Mr. Regal: The motion is properly made.

One thing I want to clear, I may be in error, Dave Beck was arraigned and entered his plea all at the same time. I don't know. That was my information. I was in Tacoma [fol. 2401] at the time.

Mr. Burdell: Pleas are entered in both.

The Court: I thought I noticed in this one there was a motion to extend the time, motion for postponement of arraignment.

Mr. Regal: That was denied. The Court: Oh, that was denied.

Mr. Regal: There was a special arraignment for the convenience of Mr. Dave Beck, Senior. He was arraigned

and did enter his plea on the same date. That was on a

Friday.

The following Tuesday Dave Beck, Jr. was arraigned. It is my understanding, without knowing, that he entered his plea, too. Mr. Burdell would know about that.

Mr. Burdell: I understood he did, too.

Mr. Regal: He did. I thought you mentioned that you wanted to argue this today because "prior to pleading." Isn't that what he said?

The Court: Prior to pleading. He has been arraigned and has pleaded, hasn't he?

Mr. Regal: Yes.

Mr. Burdell: But, as I understand it and I wasn't here, but I think Mr. Regal was here at one of the arraignments and pleas, as I understand it each defendant has been given thirty days from the time of arraignment and plea to file motions against the indictment, including motions to set aside the indictment.

Mr. Regal: That's right.

Mr. Burdell: With respect to alleged irregularities of the grand jury, and the point that I raised on that was [fol. 2402] simply this, that I don't know just exactly when Judge Shorett is going to be back. Of course, if we are granted the right to inspect all or any part of the transcript, I presume it will take some time to prepare it. Whether or not we could even get the transcript by August 24, I don't know.

Mr. Regal: I think it was Judge Todd that denied the motion for putting off the arraignment and continuing it. He indicated that if there is some reason for the thirty-day period,—no, it wasn't Judge Todd either. It was Judge Roney,—he was sure that the court would grant it. So,

I am positive that the court will grant it.

I will so stipulate now if counsel brings this matter on before Judge Shorett at the earliest possible date that he can and uses due diligence, we certainly will not resist an adequate continuance for him to get this transcript typed up, assuming he gets it from the court, and preparing motions against our indictment.

Mr. Burdell: That's quite satisfactory.

The Court: Very well, then the stipulation in open court is so noted.

Well, then, gentlemen, that is about it. It is kind of an interesting legal problem here, but it sounds to me like it is the appropriate thing to do, particularly if there is the least doubt in the minds of either one of you of the way to handle it.

Mr. Regal: As far as the technical proposition is concerned, I think Mr. Burdell's statement that he would not raise the question again may be binding on Mr. Burdell's honor but not on subsequent counsel who may take the case [fol. 2403] to the supreme court.

The Court: No, and I do not want Mr. Burdell placed in

that situation.

Mr. Regal: No, there is no hurry. I don't think there

is that much rush on that thing.

Mr. Burdell: It seemed to me counsel's statement was quite clear, and I don't think I have any misunderstanding of it, and I doubt if there can be. But, as I understand it, we will arrange mutually and with the court's permission, that is, Judge Shorett's permission, to bring this matter on for hearing before him as soon as he will hear it after he gets back?

Mr. Regal: Correct.

Mr. Burdell: Thereafter, if he permits us to examine all or any part of the transcript, we will mutually agree that we shall have a reasonable time after we have received the transcript to file our motions including any motion we may have to set aside the indictment on the grounds mentioned in this, the statute.

The Court: I wonder if we should not continue it to a date certain and with you, of course, having the opportunity

to discuss with Judge Shorett a date?

Mr. Regal: Well, do we know when Judge Shorett will be back?

The Court: Well, he will be back right after Labor Day, and I wonder if the thirteenth, which is the first Friday after he will be back—I believe I am not clear just when his month is up.

Mr. Regal: He will sure to be back at that time.

[fol. 2404] Mr. Burdell: Yes.

Mr. Regal: One-thirty?

The Court: I would say so. I believe I can make that order directly from here. I will advise Judge Turner that I have taken this step on my own, and that will send it directly to Judge Shorett's court. You can handle that, Mrs. Clerk?

The Clerk: Yes.

Mr. Regal: The possible point of disagreement as far as I can see, the only thing that might change things is when Judge Roney was presented with this matter, he said that it should be thirty days from the time the order is entered. And the oral order is entered, thus compelling counsel for the defendants to get the reporter to work on it. Then if there is some special reason why the reporter can't, they can make application for extended time. But if they are going to wait until some reporter casually gets around to it,—I know Mrs. Sartor who is the reporter in this case is not going to do this, but I want an understanding thirty days from the time the court grants orally to have the order typed up with no argument if there is a reasonable cause for delay.

Mr. Burdell: I would have no objection to that.

The Court: Very well, that will be your agreement as stated.

500

Mr. Regal: Thank you, your Honor.

(Court was adjourned.)

[fol. 2405]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR KING COUNTY

No. 30967

STATE OF WASHINGTON, Plaintiff,

-vs.-

DAVID D. BECK, Defendant.

Proceedings of July 26, 1957

Be It Remembered that the above entitled cause came regularly on for the purpose of arraignment, on Friday, July 26, 1957, at the hour of 3:10 o'clock p.m., before the Honorable Ward Roney, sitting as Presiding Judge of the above entitled court;

Laurence D. Regal, Esq., Deputy Prosecuting Attorney, appearing for Plaintiff;

William Wesselhoeft, Esq., appearing for Defendant.

Whereupon the following proceedings were had, to-wit:

The Court: State of Washington vs. David D. Beck.

Mr. Wesselhoeft: Ready, your Honor.

Mr. Regal: Your Honor, we are here today for the arraignment. This is not the usual arraignment time, and for the record I would like to explain why we are here at this time. The regular arraignment calendar is at 11:00 o'clock on Friday and 11:00 o'clock on Tuesday. Mr. Beck's attorney, Mr. Wesselhoeft, was notified that the arraignment of the defendant would be next Tuesday at 11:00 o'clock. This afternoon he served a motion for postponement of arraignment on me. This motion was heard by [fol. 2406] your Honor, and the motion was denied. And it was denied, I think, on the basis that we would come in here this afternoon for a special arraignment. I agreed to come in here for a special arraignment because Mr.

Beck is due to go out of town on business and cannot be here next. Tuesday.

The Court: That is what the Court understands.

Mr. Regal: Very well. May the record show new that I am serving a certified copy of the indictment on Mr. Beck and his attorney, Mr. Wesselhoeft.

The Court: The record may so show.

Mr. Wesselhoeft: We are reserving the right, your Honor, to move against the indictment; and if the Court would permit at this time I should like to read into the record as follows.

The Court: Very well.

Mr. Regal: Before we do that, can we finish the arraignment? Mr. Wesselhoeft, do you wish the indictment read, or do you waive the reading of the indictment?

Mr. Wesselhoeft: We will waive the reading of the indictment, provided that in no way do we waive our right

to move against it.

The Court: It is so understood. There are no waivers on the part of the defense, but waiver of reading of the indictment is noted for the record.

Mr. Wesselhoeft: Very well. Prior to the plea, your Honor, the defendant moves that the defendant be extended permission to have thirty days in which to move against the indictment or to move against the grand jury proceedings in any particulars, or to make any other motion and/or demurrer which the defendant could and/or should make at [fol. 2407] the time of arraignment, and the same shall be deemed to be made at the time, provided that the defendant shall upon proper showing of a court order have the right to have the thirty day period extended from time to time as circumstances dictate and in particular to allow defendant's attorney to obtain and study such portions of the grand jury proceedings as the Court shall order produced to the defendant.

Mr. Regal: Now, your Honor, I would like to complete the arraignment proper. I feel we should ask the defendant, David D. Beck, whether or not that is his true name, and I will proceed to do so if I may.

The Court: Well, pardon me, Mr. Regal. I don't know from Mr. Wesselhoeft's statement—are you insisting upon

a ruling on the motion at this time prior to the arraignment, or as a condition of the arraignment?

Mr. Wesselhoeft: As a condition of the arraignment,

your Honor.

The Court: Very well. The Court understands. You may proceed.

Mr. Regal: Mr. Beck, is that your true name, David D.

Beck 1

The Defendant: Yes, it is.

Mr. Regal: The record already indicates that I have served a certified copy of the indictment on Mr. Beck and his attorney.

The Court: That is correct.

Mr. Regal: I understand also at this time, your Honor, that Mr. Beck wishes to enter his plea in this matter, so he will be free then to leave the jurisdiction temporarily for business reasons.

[fol. 2408] The Court: Yes. Mr. Beck, you are present here, of course, with your attorney. You have been provided with a copy of the indictment, the reading of which has been waived. Are you prepared at this time to enter your plea?

The Defendant: I am, your Honor.

The Court: What is your plea to the charge?

The Defendant: Not guilty.

The Court: Plea of not guilty will be entered of record. Upon the motion of the defense for a continuance, the record does show that Mr. Beck is committed to appear somewhere—in Florida?

Mr. Regal: In Florida, I think it is.

The Court: —out of the State. The matter of this arraignment has been advanced from the time it was originally set to come up next Tuesday, July 30. The defense is now requesting allowance of time within which to move against the indictment or any proceedings leading up thereto. This is not an uncommon motion or request. Since the arraignment has been advanced upon the calendar some three or four days, it appearing to the satisfaction of the Court that Mr. Beck does have commitments elsewhere, and it further appearing that the Court is in reality about to recess for the vacation period of time, nothing would be

accomplished within the next thirty days anyway. And I don't understand, Mr. Regal, that the Prosecuting Attorney

is seriously resisting the matter.

Mr. Regal: Well, we want it clearly understood that this continuance, as it is called, or this period of time that is being granted the defendant to move against the indictment will not necessarily stop us from setting the case for [fol. 2409] trial because issue is joined at the time of the plea and the cause can be set for trial on the regular setting schedule.

The Court: The motion did not so indicate. The motion was simply that the defendant be granted a thirty day period or extension of time within which to move against

or otherwise object to the proceedings.

Mr. Regal: It is a standard request, but I just want to be sure that defense counsel knows that this does not mean that we can't go ahead and set this case for trial.

The Court: No, this is not an abatement or a stay in

any sense of the word.

Mr. Regal: Fine.

The Court: Mr. Wesselhoeft, in all fairness so we all understand each other, your motion seemed to indicate that it should be understood as well that the matter may thereafter be extended from time to time. I am in no position to bind any other Judge as to any further extension, but I have no hesitancy in granting the thirty day period

requested at this time.

Mr. Wesselhoeft: Well, your Honor, I can say this for the record, that is, that I have checked with the court reporter who handled the grand jury proceedings and she advises that because of other prior commitments it will be impossible for her to commence transcribing any portion of those proceedings until the 10th of August. Today is the 26th of July. Those grand jury proceedings, if transcribed, would take twenty days of her time, and the voir dire proceedings would take four or five days of her time. A thirty day extension would, therefore, be insufficient; [fol. 2410] and I want it clearly understood that in the event that the Court should permit the issuance to me of any or all such transcripts as I shall seek, I will come back into court and strongly urge additional necessary extra

time to obtain those transcripts, which should a no way operate to prejudice our proper preparation or this case.

The Court: Well, on a proper showing I can't conceive of any Judge denying that request, but again I think my authority at this time is simply to grant the thirty day extension and without prejudice to your reapplying for further extension as you deem the conditions warrant.

Mr. Wesselhoeft: It is so understood, your Honor.

Mr. Regal: Thank you.

The Court: Thank you very much, gentlemen.

(Conclusion.)

[fol. 2411] In Cause Nos. 30966 and 30967, the following proceedings were had at 2:25 p.m., November 7, 1957, in the Department of the Presiding Judge before the Hon. Malcolm Douglas, Presiding Judge; Mr. Charles Z. Smith, deputy prosecuting attorney, representing the State of Washington and Mr. Charles S. Burdell representing the defendants Beck:

[fol. 2427] Denial of Motions

The Court: On the showing as to the state of public opinion being such that the defendants cannot get a fair trial, I am not impressed with the additional showing as adding anything of substantial weight to the showing that was made before me on October 7 and which, for the reasons that I then explained, I found insufficient to justify me in granting a continuance until May of 1958.

Your motion for a continuance of one month now is untenable on the same grounds, in my opinion, that your motions heard on October 7 were untenable. I find it difficult to believe realistically that there would be any difference in your ability to secure fair-minded jurors on the

12th of December than on the 12th of November.

An additional reason, which is practical and has to do with the mechanics of our calendars, is that we would be pushing the Christmas holiday season pretty closely. Our last jury regularly impaneled is for that week of December [fol. 2428] 9; there are no more juries for the rest of De-

cember. That would mean we would be holding jurors probably well on beyond their term on the Dave Beck, Jr. case

if a month's continuance were to be granted.

I think it is fair to surmise that the selection of a jury might take a number of days, and I do not know what the estimate of counsel is as to the time that the trial would probably consume. I would be inclined to speculate it would be a matter of 10 days probably or two weeks, that you might do well to complete it in that time. Therefore, if you pushed the Dave Beck, Jr. case over to the middle of December, and the Dave Beck, Sr. case, which is now set for two weeks after, it would have to go into January; and I see nothing in the showing made that would justify the consequent disruption in the setup of the cases for trial that has already been made.

As to this alternative ten-day continuance, much of what I said applies to that too. Certainly the part with respect to calendars and finding a proper time which is fair to

both sides does.

As to legal rights and the decision as to whether the regular and orderly process of bringing the defendant to trial should be interrupted by cancelling the present setting for trial in the Dave Beck, Jr. case, Cause No. 30966, I feel the showing is not strong enough. If Judge Shorett's rulings were not sound, if they do violence to any rights of the defendants, I am sure that there is a time and place where those rights can be asserted and heard without halting the processes of bringing a defendant to trial at this stage of the proceedings.

[fol. 2429]. I will deny the motions.

[fol. 2430]

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

No. 30967

STATE OF WASHINGTON, Plaintiff,

-vs.-

DAVE BECK, SR., Defendant.

No. 30966

STATE OF WASHINGTON, Plaintiff,

-vs.-

Dave Beck, Jr., Defendant.

Transcript of Proceedings-November 4, 1957

Be It Remembered, that on the 4th day of November, 1957, at the hour of 1:30 o'clock p.m., the above-entitled cause came on regularly before the Honorable Lloyd Shorett, one of the Judges of the Superior Court of the State of Washington, for King County, sitting in Department Number 8.

APPEARANCES

The Plaintiff, State of Washington, was represented by Charles O. Carroll, Prosecuting Attorney, County-City Building, Seattle 4, Washington, through Charles Z. Smith,

Deputy Prosecuting Attorney.

The Defendants, Dave Beck, Sr., and Dave Beck, Jr., were represented by the law firm of Ferguson & Burdell, Attorneys at Law, 1012 Northern Life Tower, Seattle, Washington, through Charles S. Burdell, and John Keough, [fol. 2431] Attorneys at Law, 725 Central Building, Seattle, Washington.

Whereupon, the following proceedings were had and done, to-wit:

[fol. 2478] COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Well, I just merely mention that because we might, I think, reminisce just a little. I think two grand juries ago there was an indictment returned against the employee of the county commissioners, I think John C. Stevens, and some employee of his was indicted and the information was attacked in court. I believe Judge Agnew was then a deputy prosecutor, or in charge of that, and I think he dismissed the indictment and filed an information wherein all the arguments which had been amassed against the indictment was thrown out the window and went ahead on the information.

Mr. Burdell: Well, actually there has been some concern to me in this case, frankly, in view of the record, and frankly in view of some of the arguments I have been making, it has been of some concern to me about what would happen to my record if this indictment were dismissed and an information returned. Of course, going back to the argument, or your Honor's question about the statements, if I were asserting that the same attorney or representative [fol. 2479] who made the argument to the Grand Jury is responsible for determining whether or not an information would be returned, then my argument would be inconsistent, but I don't believe that to be the situation.

The Court: All right.

[fol. 2526] The Court: Well now, I am inclined to think this, that it might be well to give you the transcript of those two witnesses although as a matter of law I question very seriously whether the showing you made even is sustained, and if sustained by the transcript would be any ground for setting aside the indictment, but just as a matter of precaution and to be sure that you are getting whatever you can possibly be entitled to that way, I would be rather inclined to permit you to have that testimony.

[fol. 2530] The Court: Grunewald. That is the name. Now my notion on this thing before us now is that someone, a prosecutor or deputy prosecutor, said to a witness, "Why, nobody believes you. Can't you tell that we all know you are lying?"-my notion is that this sort of a statement is one which has occurred before practically every Grand Jury held in this county that I have ever heard about and that it is not only the right but perhaps the duty of the prosecutor to attempt to elicit whatever information is available by being a little harsh with witnesses whom he believes are falsifying. But what the Supreme Court of the United States is apt to say about such a situation, if this case should ever reach that tribunal, might be quite different and I would rather there was available in the record all the information so that if the Court or even our State Supreme Court, if it ever gets there, should wish to review the question they would have it available and I want to do that without giving to the defendant the entire testimony of these witnesses so as to avoid possible impeachment. [fol. 2531] Now with that explanation, I will grant the defendant's motion, the transcript will be prepared at the defendant's expense, delivered to me, and from that transcript I am going to make such excerpts as I think are relevant to this particular inquiry, and have them furnished to the defendant. If that is not satisfactory to the defendant, my inclination is to deny the motion.

Mr. Burdell: Well, let me put it this way, your Honor. It is a compliance or I would say a granting of my alternative motion which I made yesterday which related only to the testimony of the Verschueren and Stratton matter, in which I asked that if it not be made available to the defendant that the testimony be made available to the Court and made a part of the record. Now if I understand what your Honor is going to do, the transcript will be provided to the Court and it is a compliance or granting of my alternative motion if the entire transcript becomes sealed and a part of the record so that the entire transcript would go up.

The Court: Oh, well, that would be fine. All you want is to have this transcript available after trial?

Mr. Burdell: That is correct.

The Court: Oh, well, all right, I will do that for you, certainly.

Mr. Smith: Do we understand the Court's order will be substantially in terms of what the Court said before without the defendant having access before the time of trial?

The Court: All that would happen is this testimony would be transcribed, kept sealed until after trial, and [fol. 2532] delivered to the defendant's attorney after the trial and he can make such use of it then by making it a

part of the record if he so desires.

Mr. Burdell: But then I should point out that my motion was in two alternative forms. I asked that I be given the transcript, it be disclosed to me so I could argue, and then in the alternative if it was not, then it should be just made available to the Court for the Court's examination on this point, and then kept a part of the record. Now what the Court was about to do, it seems to me, was to sort of hit a halfway mark between those two motions which would be more satisfactorily. The court was going to examine the transcript and just make available to me those portions the Court might think would relate to their arguments about inflammatory conduct. Now I believe—

The Court: All right, we will do it that way and the rest of the transcript will be available to you at the conclusion of the trial.

Mr. Smith: We have one other question, your Honor. What legitimate purpose is being served other than the purpose to be served if the testimony were sealed and made available to the defendant after the trial? We cannot see any legitimate pre-trial purpose to be served by granting him access to any more of the Grand Jury testimony.

Mr. Burdell: With respect to that, my motion only was, I will say off-hand at this point either I don't see any use that I could make of the transcript after the trial except maybe in connection with a motion in arrest of judgment and possibly I could, and protect the record somehow, that [fol. 2533] way, but my motion was that if it not be given to me it be made available for the examination of this Court and the appellate court, not by me.

The Court: Ordinarily I do not like these things where a court gets a transcript and then decides without other people knowing what is in it whether it is relevant or important but since the motion is made that way and to protect legitimate objections of what I conceive to be a proper objection, I will do it here. I think that after the trial I will deliver this transcript to you, if you wish. It may be that it will be of no particular benefit to you but you may have it, if you wish. In the meantime the court stenographer will keep it.

Mr. Burden: Very well but I will be given these portions

that the Court selects?

The Court: Yes. And I understand you are willing to pay for the entire transcript?

[fol. 2560]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 34636

EN BANC

THE STATE OF WASHINGTON, Respondent,

DAVID D. BECK, also known as DAVE BECK, Appellant.

PER CURIAM STATEMENT-Filed February 3, 1960

Per Curiam.—One of the judges of this court disqualified himself from participating in the decision of this case. The eight remaining judges, after numerous conferences, are equally divided in their decision for the reasons appearing in the opinions filed.

There being no majority for affirmance or reversal, the judgment of the trial court stands. affirmed. F. P. W. F. L. C.

It is so ordered.

[fol. 2561]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 34636

En Banc

STATE OF WASHINGTON, Respondent,

V.

DAVID D. BECK, also known as DAVE BECK, Appellant.

Opinion-Filed February 3, 1960

This is an appeal from a judgment and sentence entered upon a verdict of guilty to a charge of grand larceny by embezzlement. Twenty-nine assignments of error raise a multiplicity of issues.

The trial itself, divorced from the prominence of the

defendant, presents a very simple factual issue.

The state's evidence showed that the defendant had possession of a 1952 Cadillac automobile, belonging to the Western Conference of Teamsters; that he authorized its sale; that it was sold for nineteen hundred dollars, and the proceeds of the sale were deposited in one of his personal accounts over which he had exclusive control; that the Western Conference of Teamsters never received any part of the nineteen hundred dollars.

To meet this evidence in support of the charge that he did

"... wilfully, unlawfully and feloniously secrete, withhold or appropriate the said \$1,900 to his own use with intent to deprive and defraud the owner thereof;"

[fol. 2562] there was testimony that the defendant thought the car was sold while he was out of the city; that when he returned and found that the car had been sold and the purchase price had been deposited in his account, he delivered nineteen hundred dollars to a bookkeeper and told him to apply it to the account of either the Western Conference of Teamsters or the Joint Council of Teamsters, whichever owned the car. It was patently a defense that could be contrived to meet the exigencies of the case.

The state's case was clear and unchallenged. The basic issue for the determination of the jury was whether or not it believed the explanation presented by the defense. The verdict of guilty was the jury's answer to that issue.

We shall adopt the appellant's ten divisions for the con-

sideration of the twenty-nine assignments of error.

I. Grand Jury Proceedings. This is the longest section of appellant's brief (some 66 pages).

We disagree completely with the appellant as to the function of a grand jury in this state. In the period when an indictment by a grand jury was a prerequisite to a prosecution for a felony, it was said (and the appellant seems to have assumed its present day applicability) that a grand jury was meant to be a shield between the defendant and the zeal of the prosecutor. For the most part, the cases upon which the appellant relies come either from the time when a grand jury indictment was necessary, or from jurisdictions where it is still a requisite.

[fol. 2563] The grand jury in this state is not and was not intended to be a shield for the accused. Our state

constitution provides that,

"... Offenses heretofore required to be prosecuted by indictment may be prosecuted by information, or by indictment, as shall be prescribed by law." Art. I, § 25, Washington state constitution.

Furthermore,

"... No grand jury shall be drawn or summoned in any county, except the superior judge thereof shall so order." Art. I, § 26, Washington state constitution.

The prosecutor's information has become the standard means of bringing charges in this state, as in all other states which authorize its use. It has long been settled that there is no denial of Federal constitutional rights involved in the substitution of the prosecutor's information for the grand jury's indictment. Hurtado v. People of California (1884),

110 U. S. 516; State v. Nordstrom (1893), 7 Wash. 506, 35 Pac. 382; affirmed 164 U. S. 705.

The grand jury is now used not as a shield against the zealous prosecutor, as in times past, but to replace, on occasion, the prosecutor who is not sufficiently zealous (for whatever reason), and, more often, as presently, as a valuable but expensive weapon (hence, used sparingly) to assist a prosecutor in investigating conditions and people insulated from investigation by the usual procedures. It has been said that,

"The inquisitorial power of the grand jury is the most valuable function which it possesses to-day and, [fol. 2564] far more than any supposed protection which it gives to the accused, justifies its survival as an institution. As an engine of discovery against organized and far-reaching crime, it has no counterpart..." In re Grand Jury Proceedings, 4 F. Supp. 283, 284 (E.D. Pa. 1933).

It must be accepted for what it is: an inquisitorial body, an accusing body, and not a trial court. Its functions are investigative and not judicial. It is not concerned that the evidence, then available, establish the commission of crime beyond a reasonable doubt. State v. Lawler (1936), 221 Wis. 423, 267 N. W. 65. The end result of a grand jury's deliberations is not a judgment and sentence, but merely a charge; consequently, the concepts of procedural due process do not apply to the grand jury, except as they may be necessary to prevent prejudice to an accused or a witness in subsequent proceedings; thus, a grand jury may not deny the constitutional privilege against self incrimination, and it may not impair the constitutional protection against unreasonable searches and seizures.

The grand jury is "the voice of the community accusing its members," (Judge Learned Hand in *In re Kittle*, 180 Fed. 946, 947 (S. D. N. Y. 1910)), and it may properly re-

flect the sentiment of the community. It

"... breathes the spirit of a community into the enforcement of law. Its effect as an institution for investigation of all, no matter how highly placed, creates the elan of democracy." United States v. Smyth, 104 F. Supp. 279, 291 (N.D. Cal. S.D. 1952).

The appellant, on the other hand, suggests that the grand jurors were disqualified because they presumably reflected the sentiment of the community from which they came. The [fol. 2565] inference from the appellant's argument is that a person who can secure a large amount of adverse publicity from newspapers, radio, and television, thereby becomes immune from grand jury investigation; the more notoriety he achieves, the more reason he should not be investigated.

Investigative agencies—city, county, state, or Federal—do not wait for the hue and cry to die down before they begin to investigate or to file a charge against an accused. Nor do we see why a grand jury investigation should be handicapped or delayed because of publicity of whatever kind or character. Because a grand jury merely makes the accusation and does not try the accused, the general rule is that, barring statutory provisions to the contrary, bias or prejudice on the part of one or more of the grand jurors is not a ground for quashing the indictment. In United States v. Knowles, 147 F. Supp. 19, 21 (D.C. 1957), it was said,

"The basic theory of the functions of a grand jury, does not require that grand jurors should be impartial and unbiased. In this respect, their position is entirely different from that of petit jurors. The Sixth Amendment to the Constitution of the United States expressly provides that the trial jury in a criminal case must be 'impartial'. No such requirement in respect to grand juries is found in the Fifth Amendment, which contains the guaranty against prosecutions for infamous crimes unless on a presentment or indictment of a grand jury. It is hardly necessary to be reminded that each of these Amendments was adopted at the same time as a part of the group consisting of the first ten Amendments. A grand jury does not pass on the guilt or innocence of the defendant, but merely determines whether he should be brought to trial. It is purely an accusatory body. This view can be demonstrated by the fact that a grand jury may undertake an investigation on its own initiative, or at the behest of one of its members. In such event, the grand juror who instigated the proceeding that may result in an

indictment, obviously can hardly be deemed to be impartial, but he is not disqualified for that reason."

[fol. 2566] In Coblenz v. State (1933), 164 Md. 558, 166 Atl. 45, 88 A. L. R. 886, 894, 895, it is said:

"... we find no ground for imposing a requirement that they must be unprejudiced as the objection demands. On the contrary, such a requirement would seem inconsistent with their freedom to accuse upon their own knowledge, for persons who come with knowledge sufficient to serve as a basis of indictment are likely to come with the conclusion and prejudice to which that knowledge leads. They must act upon their own convictions, after conferring secretly and without any interference; but they are not required to come without any prejudice. ..."

And in United States v. Rintelen, 235 Fed. 787 (S. D. N. Y. 1916), Judge Augustus N. Hand said (p. 789),

"... An intelligent grand juror can hardly be found who has not decided opinions derived from his general knowledge as to any case of public notoriety. He may have even passionate feelings on the subject, which in general affect and actuate him. The question is not what his feelings were, but whether he voted for an indictment honestly and upon competent evidence. That an indictment can be quashed because the grand jurors had personal prejudices, even ill-founded ones, would leave every indictment in an important case, irrespective of the evidence on which it was found, open to attack..."

We reiterate, as the quoted authorities establish, that the general rule is that, barring statutory previsions to the contrary, bias or prejudice on the part of one or more of the grand jurors is not a ground for a quashing of a grand jury indictment, or for setting aside the judgment based on the verdict of a petit jury after a trial on such an indictment. The appellant says our consideration of this case must be based upon the premise that he, as a matter of

law, was entitled to an impartial and unprejudiced grand

jury.

If we assume that the premise is correct, we are confronted with the fact that there is no showing that any [fol. 2567] member of the grand jury was biased or prejudiced against the appellant. His contention is that some or all of the members of the grand jury must be biased or prejudiced against him because of the unfavorable publicity which he had received. Jury verdicts will not be set aside on such unsupported suppositions.

However, the premise is not correct unless, as the appellant urges, our 1854 grand jury statute requires that grand jurors be impartial and unprejudiced. The only support for the suggestion that there is such a statutory requirement is contained in one section which relates to the longgone situation where a grand jury met for the purpose of considering whether persons then in custody or released on bail and "held to answer for an offense" should be indicted or released. Such a person might challenge the panel because it was not drawn properly (RCW 10.28.010), or might challenge individual grand jurors

"... for the reason of want of qualification to sit as such juror; and when, in the opinion of the court, a state of mind exists in the juror, such as would render him unable to act impartially and without prejudice." BCW 10.28.030.

There was a reason for such a challenge by a "person in custody or held to answer for an offense," but the appellant was not such a person. When a modern grand jury starts its investigative process it seems ridiculous to suggest that as each new personality comes under scrutiny the proceedings must stop until it can be determined whether any member of the grand jury is biased or prejudiced against him; and, if a grand juror is so biased or prejudiced, the in[fol. 2568] vestigation is at an end. Such a situation was not contemplated, even in territorial days, for our statute provides that a grand juror must testify of his own knowledge of offenses committed, and this testimony may initiate such investigation as would lead to an indictment. RCW 10.28.130. A grand juror so testifying is disqualified from

joining in the deliberations and voting. RCW 10.28.140. Both sections assume that a grand juror so testifying is properly a member of the panel, and, as stated in Coblenz v. State, supra, any requirement that such grand juror be completely unprejudiced is inconsistent with his right and obligation to share his information with the grand jury. To summarize this phase of the case:

- 1. We are unable to conclude that because a statute gave "any person in custody or held to answer for an offense" the right to challenge a grand juror for prejudice, there is a statutory or any other requirement that grand jurors be without bias or prejudice against any one indicted by them, except the persons for whose benefit that statute was enacted.
- 2. That, absent such statutory requirement, bias or prejudice on the part of one or more of the grand jurors is not a ground for setting aside a judgment based on a verdict of guilty returned by a petit jury.
 - 3. There is no showing of bias or prejudice.

The charge to the grand jury is criticized and said to constitute prejudicial error. As we have indicated, a grand [fol. 2569] jury in this state is convened only for a special purpose. It was not necessary to leave to the clairvoyant powers of this grand jury the determination that they had not been called to investigate all of the persons then held in the King county jail on felony charges, as RCW 10.28.010 and 10.28.030 seem to contemplate; and it was proper to advise them that they had been called for a special purpose.

It is stated, as a general rule, that the court has a wide discretion in calling matters of concern to the attention of the grand jury. 24 Am. Jr. 864, Grand Jury, § 45; 38 C. J. S. 1012, Grand Juries, § 21(b). Some courts have said that the court's charge to the grand jury is not subject to judicial review. United States v. Smyth, supra; Bethel v. State (1924), 162 Ark. 76, 257 S. W. 740; State v. Lawler, supra. As Judge James Alger Fee said in his opinion in United States v. Smyth, supra, in discussing the subject of grand jury instructions (p. 292).

"... He [the court] may give instructions which do not constitute precedents and which cannot be controlled or corrected by appellate courts. These may be political manifestoes. They may be entirely erroneous. These may include cautions and admonitions to fit local conditions and guard against dangers which the judge believes exist at the moment..."

and, in a footnote (36), he says,

"There has never been an instance where instruction to a grand jury was held error by an appellate court. If the indictment is good and the trial fair, that ends the matter, irrespective of what the judge may have said to the grand jury."

It must be remembered that it was not only the prerogative but the duty of the superior court to direct the grand [fel. 2570] jury's attention to those matters which the superior court judges, who had called the grand jury, believed to merit investigation by it. In so doing, it was proper for the court to make note of facts publicly known and allegations publicly heard, as a form of reference from which the grand jury should begin its investigation.

Chief Justice Vanderbilt, speaking for the supreme court

of New Jersey, has said.

"While the grand jury is an independent body in investigating the facts and in making presentments and indictments, it necessarily looks to the judge presiding in the county not only for instructions on the law to govern its deliberations in particular matters but also as to the matters of crime or of public concern that should receive its attention. Any unusual matter such as the conditions in the Camden County jail manifestly calls for specific instructions, if the criminal law is to be adequately enforced and if the public interest in the efficient administration of public institutions is to be maintained. . . . " In re Camden County Grand Jury (1962), 10 N. J. 23, 34, 89 A. (2d) 416, 423.

The extent of our review of the charge, if we have any right to review it, is clearly limited, as stated in the opinion

in Wheeler v. State (1953), 219 Miss. 129, 63 So. (2d) 517, to whether or not the (p. 144)

"...language in the judge's charge had the effect of dictating to or coercing the grand jury into returning an indictment against the appellant..."

We are unable to see any element of dictation or coercion in the charge to the grand jury in this case. The court did only what it should have done in directing the grand jury's attention to the reason why it was called.

We turn now to the claimed misconduct of the prosecutor before the grand jury. The appellant attempts to apply the [fol. 2571] standards of a trial to a grand jury investigation.

Of course, the grand jury must be free from all outside interference and influence during its deliberations and voting, and this requires that no parties other than the grand jurors themselves be present at such time. Cases such as Attorney General v. Pelletier (1922), 240 Mass. 264, 134 N. E. 407; Williams v. State (1919), 188 Ind. 283, 123 N. E. 209; United States v. Wells, 163 Fed. 313 (D. C. Idaho 1908), are decided upon this principle of protection of the grand jury's deliberations, and they have no bearing on the present case.

The appellant quotes from United States v. Wells, supra. It is interesting to note that Judge Hand in United States v. Rintelen, supra, in discussing claimed misconduct of the

district attorney, said of that case (p. 792),

The case relied upon by the defendants is United States v. Wells, 163 Fed. 313. There the district attorney not only gave the grand jury a list of the defendants and commented on the weight of the evidence, but before the indictment was signed was requested to leave the room by one of the jurors, so that there could be discussion, and refused to go, said that no discussion could be had until the indictment was signed, directed the foreman to sign the indictment without permitted further consideration or reading of the indictment, and withheld various documents from the inspection of the grand jury, the contents of which they were obliged to take from the statements of the district at-

were utterly different from those of the case at bar. The indictment there was evidently controlled by the district attorney, was not the finding of the grand jury, and consequently the plea in abatement was there properly sustained. I am referred to no other decision than United States v. Wells, supra, where an indictment has been held bad by reason of the conduct of a district attorney before the grand jury."

Judge Hand then emphasized that the independence and [fol. 2572] freedom from coercion on the part of the grand jurors is the thing to be protected, and said (pp. 794, 795),

"... A plea based on the conduct of the district attorney before the grand jury should be adjudged insufficient unless it clearly shows prejudice to the defendant and indicates that the alleged irregularities affected the action of the grand jury. That this is the proper rule appears from various decisions. Agnew v. United States, 165 U. S. 36, 17 Sup. Ct. 235, 41 L. Ed. 624; United States v. American Tobacco Co., 177 Fed. 774; United States v. Nevin, 199 Fed. 833; United States v. Gradwell, 227 Fed. 243. The dictum in United States v. Wells, supra, so far as it is not in accord with the rule I have laid down, does not follow the weight of authority."

He said, also, that if

"... a comment by the district attorney, on the testimony were held in itself to invalidate an indictment, the opportunity for technical motions and dilatory pleas would be greatly enlarged."

Where the prosecutor is properly in attendance during the examination of witnesses, we find a significant lack of precedents concerning judicial review or control of his conduct of such examinations. The conclusion must be that the examination of witnesses before a grand jury has never been intended to be a matter of judicial control as in the examination of witnesses before a petit jury. Nor does this constitute any surprising gap in the framework of our system of criminal justice. Beyond enforcing the requirements that the grand jurors be so drawn and impaneled as to be representative of the community from which they come (State ex rel. Murphy v. Superior Court for Whatcom County (1914), 82 Wash. 284, 144 Pac. 32), and that they be given the opportunity to deliberate in secrecy and in freedom from any compulsion, we find very [fol. 2573] little control exercised over what goes on in the grand jury room. No case is known in which due process considerations have been applied to the procedures by which a grand jury reached an indictment.

Judge Learned Hand gives the reason in these words,

"One purpose of the secrecy of the grand jury's doings is to insure against this kind of judicial control. They are the voice of the community accusing its members, and the only protection from such accusation is in the conscience of that tribunal. Therefore, except in sporadic and ill-considered instances, the courts have never taken supervision over what evidence shall come before them, and, with certain not very well-defined exceptions, they remain what the Grand Assize originally was, and what the petit jury has ceased to be, an irresponsible utterance of the community at large, answerable only to the general body of citizens, from whom they come at random, and with whom they are again at once merged. A court shows no punctilious respect for the Constitution in regulating their conduct. We took the institution as we found it in our English inheritance, and he best serves the Constitution who most faithfully follows its historical significance, not he who by a verbal pedantry tries a priori to formulate its limitations and its extent. . . . " In re Kittle, supra.

In conclusion, we would emphasize again that the grand jury makes accusations; that it does not determine guilt or innocence. The trial courts then take over, and it becomes the burden of the state to prove the guilt of the person indicted.

Were we in a jurisdiction in which a grand jury was mandatory, we would be compelled to hold that there had

been no violation of the defendant's right to a grand jury in the present case. If we assume, arguendo, that there are sufficient irregularities in the present case to require such a jurisdiction to quash the indictment, then, since there is no constitutional or statutory right to a grand jury in this [fol. 2574] state, we are unable to understand how such irregularities could be of prejudice to the appellant. We find no violation of appellant's constitutional, statutory, or common-law rights in the present grand jury proceedings.

II. Motions for a Continuance and a Change of Venue.

A. Continuance:

The indictment was returned by the grand jury on July 12, 1957. The trial began five months, lacking ten days (December 2, 1957), later. The trial had originally been set for October 28, 1957, but was continued for more than a month on the representation that additional time was necessary for the appellant to prepare his defense.

There is no undue haste here, and no claim that there was not adequate time for the preparation of a defense. The appellant wanted further continuances on the ground that the inflammatory publicity concerning appellant had created an atmosphere in which it was impossible for him to obtain

a fair trial.

The only statutory ground for a continuance is found in RCW 10.46.080, which has to do with the absence of material evidence, and it has no significance here. We have, however, reviewed orders denying a continuance on grounds similar to those urged here. See State v. Collins (1957), 50 Wn. (2d) 740, 743, 314 P. (2d) 660. In the Collins case we said that the granting of the requested continuance was discretionary with the trial court. We find no abuse of discretion here.

[fol. 2575] The appellant tries to apply the ex post facto test of the number on the jury panel who admitted prejudice. Appellant fails to make clear that all such prospective jurors were excused, and that thirteen jurors were selected and accepted by both sides within a very reasonable time. All of the fifty-five people who were examined on voir dire as prospective jurors had, of course, heard of the case

either through television, radio, or the newspapers, but

only nineteen were excused for prejudice.

It is the law of this state that the fact that a prospective juror "has formed or expressed an opinion upon what he may have heard or read," shall not disqualify him; and to excuse a prospective juror for "cause"

"... the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially." RCW 4.44.190.

As Judge Geraghty said in State v. Patterson (1935), 183 Wash. 239, 245, 48 P. (2d) 193,

"... It is reasonable to suppose that it was difficult to select a panel of twelve men and women who had not heard or read about the case and formed some opinion or received some impression concerning the event. Under present-day conditions, to select a jury with minds free from some such tentative opinion or impression would be possible only by drawing the panel from hermits or illiterates, and even these would not be isolated from information conveyed by the radio."

In that case, we held that the proper test to be applied to a prospective juror is not whether or not he has an opinion, but whether he can, notwithstanding an opinion, disregard it and render a fair and impartial verdict according to the evidence.

[fol. 2576] The record of the voir dire examination of those called as prospective jurors negates any contention that a continuance was necessary to insure the appellant a fair trial, and justifies the statement of Judge Malcolm Douglas (on November 26, 1957), in denying the motion for a continuance:

"... I am not at all impressed with your contention that Dave Beck, Sr., cannot have a fair trial in this community at this time. I believe arguments such as these do poor credit to the intelligence and fairness of the high-calibered jurors that we have in this community, and I am satisfied from observing the trial of cases for many years here and observing the type and

quality of jurors that we have had . . . that it is possible to find 12 jurors who can give a defendant, including this defendant, just as fair a trial in December as one could be found to give him in May. . . . "

B. Change of Venue:

The appellant urges that it was prejudicial error to refuse his application for a change of venue to Snohomish or Whatcom county.

The procedure for a change of venue is set forth in

BCW 10.25.070, which reads as follows:

"The defendant may show to the court, by affidavit, that he believes he cannot receive a fair trial in the county where the action is pending, owing to the prejudice of the judge, or to excitement or prejudice against the defendant in the county or some part thereof, and may thereupon demand to be tried in another county. The application shall not be granted on the ground of excitement or prejudice other than prejudice of the judge, unless the affidavit of the defendant be supported by other evidence, nor in any case unless the judge is satisfied the ground upon which the application is made does exist."

To conform to the statutory requirement where the motion is based on "excitement or prejudice against the defendant," the affidavit of the defendant must be "supported [fol. 2577] by other evidence," and such a motion will not be granted "unless the judge is satisfied the ground on which the application is made does exist."

The affidavit of the appellant was not supported by evidence other than newspaper headlines and stories. The affidavit in support of the motion was based on an alleged belief that the hostility and prejudice against him was less extreme and less intense in the counties of Whatcom and

Snohomish than it was in King county.

Appellant refers to this as an uncontroverted affidavit. The state could not well controvert what appellant believed.

The only case in which we have reversed a conviction for failure to grant a change of venue was State v. Hillman (1906), 42 Wash. 615, 85 Pac. 63. There, the affidavit set

forth the content of inflammatory newspaper articles and alleged the fact (p. 618),

"... that there was an organization known as the 'Hillman Victim Association,' composed of a large number of people, organized for the purpose of creating public sentiment against appellants, and particularly against appellant Hillman, which said association by means of public meetings and individual efforts, and by mailing postal cards reflecting upon the character of said Hillman,..."

Also the opinion points out that (p. 618),

... There was one affidavit signed by something over thirty residents of King county, wherein the affiants stated that they had read the unfavorable comments in the newspapers, and had heard them discussed by large numbers of people; that said articles and discussion dealt with the innocence or guilt of the defendants, and that the same were most always unfavorable to defendants; that the comments caused by said publications had been so widely spread that the public mind, in their opinion, was prejudiced to such an [fol. 2578] extent that a fair trial could not be had in the county; that they had heard of the organization formed for the purpose of harassing said Hillman in the courts, and elsewhere, and that the efforts of said association were reported to be very injurious to said Hillman."

In the Hillman case we have allegations of fact, which, if not true, could have been controverted. Here we have only legal conclusions based upon information and belief,

not capable of contravention.

Even where the alleged offenses have been accompanied by a great deal of public indignation and prejudice against the accused, the appellate court will not disturb a determination by the trial court that a change of wenue should not be granted in the absence of a showing of a manifest abuse of discretion. State v. Guthrie (1936), 185 Wash. 464, 56 P. (2d) 160; State v. Schneider (1930), 158 Wash. 504,

291 Pac. 1093; State v. Schafer (1930), 156 Wash. 240, 286 Pac. 833; State v. Lindberg (1923), 125 Wash. 51, 215 Pac. 41; State v. Wright (1917), 97 Wash. 304, 166 Pac. 645; State v. Welty (1911), 65 Wash. 244, 118 Pac. 9.

In the Lindberg case, the accused was a director of a bank which had failed. It had a great many stockholders and many more depositors, and the failure was a matter of great public interest and concern. The court there said (p. 54),

"... This affidavit is uncontroverted and contains recitals from which it can be inferred that prejudice to some extent existed in certain parts of the county against the officers generally of the particular bank, and were the question one on which this court could exercise an independent judgment, we are free to say that it would be permissible to reach a conclusion different from that reached by the trial court. But the question [fol. 2579] is not one of the first instance in this court. By the express provisions of the statute (Rem. Comp. Stat. §§ 2018, 2019) [P.C. §§ 9397, 9398], the question is vested in the first instance in the discretion of the trial court, and we can review its ruling only for gross abuse..."

The court then used a long quotation from State v. Welty, supra, which has been repeated enough times to fill twenty pages of our reports. (We adopt it but do not repeat it.) Our conclusion in the Lindberg case was that we found nothing warranting a holding that the trial court grossly abused its discretion, and then said (p. 55),

"... The purpose of a change of venue is to secure to the accused a trial before an impartial jury, and if the record does not disclose affirmatively that the accused did not have such a trial, it is very persuasive of the fact that the trial court did not err in denying the change..."

We find, in the present case, no abuse of discretion by the trial court in denying the motion for a change of venue; and this is bolstered by our conclusion, after having studied the entire record, that the defendant did, in fact, have a fair trial.

III. Right to Use of Grand Jury Transcript.

William F. Devin, one of the special deputy prosecuting attorneys before the grand jury, testified concerning certain statements made by the appellant in his testimony before the grand jury. Mr. Devin was testifying not from any document or transcript, but from his recollection of answers

given by appellant.

The appellant urges that he was entitled to a transcript of his entire testimony before the grand jury to facilitate his cross-examination of Mr. Devin. He cites no authorities [fol. 2580] in support of such a proposition. He passes but lightly on the fact that the trial court did make available to appellant's attorneys that portion of appellant's testimony before the grand jury which varied from Mr. Devin's recollection thereof.

A defendant is not entitled, as a matter of right, to a copy of the transcript of his testimony before a grand jury; and the extent to which such a transcript will be made available to him is within the sound discretion of the trial court. State v. Ingels (1940), 4 Wn. (2d) 676, 104 P. (2d) 944; State v. Morrison (1933), 175 Wash. 656, 27 P. (2d) 1065. This is likewise the rule in the Federal courts. Pittsburgh Plate Glass Co. v. United States (1959), 360 U. S. 395, 79 S. Ct. 1237, 3 L. Ed. (2d) 1323.

The appellant has cited cases such as Jencks v. United States (1957), 353 U. S. 657, 77 S. Ct. 1007, 1 L. Ed. (2d) 1103, and Powell v. Superior Court (1957), 48 Cal. (2d) 704, 312 P. (2d) 698, which have to do with the making available to a defendant the written statements by witnesses or confessions of the defendant in the possession of the

prosecution.

The United States Supreme Court has recently (June 22, 1959) ruled that the Jencks decision does not encompass grand jury minutes. In Pittsburgh Plate Glass Co. v. United States, supra, the trial judge refused the defense the right to inspect grand jury testimony of a key government witness. The supreme court held that the determination of such an issue was committed to the sound discretion of the trial judge; and that the defendant was entitled to [fol. 2581] such a disclosure only where the ends of justice required setting aside the public policy of maintaining the

secrecy of the grand jury proceedings. The burden is on the defendant to show a particularized need for it. *United* States v. Proctor & Gamble Co. (1958), 356 U. S. 677, 78

S. Ct. 983, 2 L. Ed. (2d) 1077.

We have recently explored the whole area covered by the Jencks case in State v. Thompson (1959), 154 Wash. Dec. 91, 338 P. (2d) 319, and concluded that it was a matter in the discretion of the trial court whose action will not be disturbed on appeal unless there is a manifest, abuse of that discretion. We are convinced that the trial court properly exercised its discretion in allowing the defendant only limited access to the transcript of his testimony before the grand jury.

IV. The Propriety of the Prosecution's Conduct Toward Defense Witnesses.

The gist of four assignments of error is that the claimed prejudicial conduct of the prosecuting attorney toward appellant and his witness Marcella Guiry entitled him to a new trial. The claim is that in each instance "the prosecution attempted to influence the jury by improper tactics relating to the right against self-incrimination."

We will consider the situations separately. The witness Marcella Guiry was the appellant's secretary. Before the grand jury she had invoked the fifth amendment and declined to testify as to certain matters, but at the trial she

did testify as to those matters.

[fol. 2582] She was asked, on cross-examination, if her answer to certain questions before the grand jury were the same as her answers in court. The appellant's claim was that she either had to say "no," or disclose the fact that she had invoked the fifth amendment, and that either would be prejudicial. She was never placed in that position because an objection was sustained to the question. Appellant urges, however, that the asking of the question was prejudicial error; and relies on State v. Emmanuel (1953), 42 Wn. (2d) 1, 253 P. (2d) 386, and State v. Carr (1930), 160 Wash. 83, 294 P. (2d) 1016. These were cases of persistent misconduct and are not applicable here. There was, here, no effort to pursue the matter further after the objection was sustained.

In such a situation as this, the judgment of the trial court in passing apon the motion for a new trial must be accorded great weight. The trial judge is able to observe any reaction of the jurors unfavorable to appellant by reason of misconduct of counsel, and is in a much better position than is this court to determine whether it has been prejudicial. Discargar v. Seattle (1948), 30 Wn. (2d) 461, 191 P. (2d) 870; State v. Van Luven (1945), 24 Wn. (2d) 241, 163 P. (2d) 600; O'Neil v. Crampton (1943), 18 Wn. (2d) 579, 140 P. (2d) 308; Marlowe v. Patrick (1935), 181 Wash. 647, 44 P. (2d) 776. The trial court did not see any prejudicial misconduct in the asking of the question to which an objection was sustained; and we find no abuse of discretion in his refusal to grant a new trial in consequence of the claimed misconduct.

[fol. 2583] We turn now to the appellant's contention, regarding his own examination. When he took the stand, he limited his testimony rather rigidly to matters concerning his official position with various labor organizations, such as the International Brotherhood of Teamsters, the Western Conference of Teamsters, and the Joint Council of Teamsters; the location of his offices in Washington, D. C., and Seattle; his employment of the accountancy firm of Friedman, Lobe & Block for his personal financial books and records. He did not testify with respect to the transaction, which was the basis of the indictment.

No objection was made during the appellant's cross-examination, except that the matter inquired about was immaterial, irrelevant, and beyond the scope of the direct examination. (There is one exception concerning which we will

make special reference.)

He testified, over objection, that Mrs. Marcella Guiry took care of his books so far as the B & B Investment Company was concerned; that he could not identify her handwriting on certain exhibits; that certain accounts seemed to be in connection with his business; that there was a sale of property with Callahan, but he did not recall the details; that he authorized the sale of a Cadillac, and the amount received was nineteen hundred dollars; that the money was deposited in the B & B Investment Company account.

All of which was entirely consistent with the appellant's

theory of the case.

[fol. 2584] Objections were sustained to questions as to whether he drove the 1952 Cadillac; when the final payment was made on the sale of the Beck-Callahan property; and whether appellant was in town when the proceeds of the sale were deposited in the B & B Investment Company account.

When the question of "who sold the car, do you know?" was asked, counsel for appellant asked that the jury be excused, and stated to the court in the absence of the jury,

"That question being outside the scope of the direct examination and having been asked by Counsel, and since it is in effect a comment on the defendant's failure to testify with respect to the car and violates his constitutional right, I move for a mistrial."

The motion was denied, and the objection sustained on the ground that it went beyond the scope of the direct examination.

Appellant urges that the rule is that the cross-examination of a defendant who takes the stand is limited to subjects to which the defendant testified, and that examination beyond the scope of the direct examination, in such cases, constitutes a violation of the defendant's right against self incrimination.

When a defendant takes the stand in his own behalf he is subject to the same rules on cross-examination as other witnesses. State v. Putzell (1952), 40 Wn. (2d) 174, 242 P. (2d) 180; State v. Jeane (1950), 35 Wn. (2d) 423, 213 P. (2d) 633; State v. Ternan (1949), 32 Wn. (2d) 584, 203 P. (2d) 342; and, if he opens up a subject on direct examination, he can be cross-examined thereon. State v. Johnson (1935), 180 Wash. 401, 40 P. (2d) 159; State v. De-Gaston (1940), 5 Wn. (2d) 73, 104 P. (2d) 756. [fol. 2585] The latitude to be allowed on cross-examination

is within the sound discretion of the trial court. State v. Schneider, supra; State v. Jeane, supra. The trial court

adequately protected the appellant.

The appellant is urging, as in the case of Mrs. Guiry, that, even though objections were sustained, the asking of the questions in itself constituted prejudicial error.

Appellant again relies on State v. Emmanuel, supra, together with State v. Carr, supra; but the circumstances which warranted reversal in those cases are readily distinguishable from those with which we are here concerned. We fail to find any indication that appellant's right against self-incrimination was violated, or that the court abused its discretion in its handling of his cross-examination.

V. Admission of State's Exhibits Nos. 17 and 18.

The issues raised by the appellant's objections to state's exhibits Nos. 17 and 18 must be examined against the background of the circumstances, and the position of the state and the appellant with reference to them.

It is not disputed that the nineteen hundred dollars, which the appellant is charged with having embezzled, was deposited February 3, 1956, in a bank account of which he was the sole owner, the account being in the name of

the "B & B Investment Co."

How this nineteen-hundred-dollar item was entered in the records of the "B & B Investment Co." became the subject of controversy. The state insisted that the nineteen-hundred-dollar item was entered in the "B & B Investment Co." records as the proceeds of the sale of Beck-Callahan [fol. 2586] property. This would support an inference of an intention to conceal the real source of the nineteen hundred dollars.

It is conceded that the "B & B Investment Co." was disposing of real property known as the Beck-Callahan property, and \$16,900 had been received by the "B & B Investment Co." from that source in January of 1956.

The state's evidence in support of its position was exhibit No. 17, a photostatic copy of a work sheet prepared in March, 1957, by Carl E. Houston, an accountant employed by the accounting firm which was preparing the appellant's 1956 income tax return. Taking his information from the "B & B Investment Co." ledger sheet or journal (a loose-leaf record), he entered on his work sheet

under "Sales of real estate and other assets Beck/Callahan \$16,900.00," as part of the January, 1956, receipts and "Beck/Callahan \$19,000.00," as part of the February receipts. He discovered his error as to the latter amount, and changed it to \$1,900.00.

The defense was urging that Houston had made a mistake, and that the actual entry in the "B & B Investment Co." ledger sheet or journal for February, 1956, was "Sale Cadillae Auto \$1,900.00," as shown by defendant's exhibit No. 22, which the defense claimed to be the ledger sheet or journal from which Houston secured his information.

If Houston did make a mistake, it was not discovered until after he had testified before the grand jury, and his [fol. 2587] work sheet had been before that body and had been photostated. State's exhibit No. 17 was the photostatic copy of that work sheet. The actual work sheet remained in the possession of the accounting firm until produced at the trial. At that time it appeared that the nineteen hundred dollar item had been moved from "Sales of real estate and other assets Beck/Callahan" to a new heading of "Sale of Auto." With this change, the original work sheet was admitted as state's exhibit No. 18.

Houston testified that it was as a result of the grand jury investigation that the accountants first discovered that the nineteen hundred dollar item came from the sale of an automobile. After his testimony before the grand jury, he did not again examine the "B & B Investment Co." ledger sheet or journal until in August or September, 1957. On his re-examination he found the entry "Sale Cadillac Auto \$1,900.00," as shown in defendant's exhibit No. 22, and then made the change, to which we have referred, on state's exhibit No. 18

One can believe that Houston made a mistake in March, 1957, and that exhibit No. 22 is the original and only ledger sheet or journal; or he can believe that Houston copied correctly what he saw in March, 1957, and that Marcella Guiry prepared a new ledger or journal sheet and substituted it for the original after the grand jury investigation and before the trial. All entries on exhibit No. 22 are in her handwriting, and such a substitution would have been possible.

[fol. 2588] It must be remembered that the ledger sheet or journal of the "B & B Investment Co." was a part of the books and records of the appellant, which the state could not subpoena or demand that he produce for the reason that it was beyond the power of the court to enforce the demand. State v. Morden (1915), 87 Wash. 465, 151 Pac. 832; State v. McCauley (1897), 17 Wash. 88, 49 Pac. 221. To make such a demand in the presence of the jury would be error warranting a reversal. State v. Jackson (1915), 83 Wash. 514, 145 Pac. 470.

We are satisfied that the state's exhibits Nos. 17 and 18 were admissible as secondary evidence, and the best available to the state of what the appellant's records showed as to the source of the nineteen hundred dollars. Hartzog v. United States (1954), (4th C.A.) 217 F. (2d) 706; Lisansky v. United States (1929), (4th C. A.) 31 F. (2d) 846, 67

A. L. R. 67. Its weight was for the jury.

The defense urged that when it offered the ledger of journal sheet (defendant's exhibit No. 22), it was the best evidence, and secondary evidence was not admissible. That, of course, assumed the authenticity of exhibit No. 22. The state was not bound by, nor was the jury obliged to believe, Mrs. Guiry's testimony that she had made the entry "Sale Cadillac Auto \$1,900.00" in the first part of March, 1956; and that she had not seen the ledger or journal sheet in question since March, 1957. until she saw it in the court room. Unosawa v. Wright (1954), 44 Wn. (2d) 777, 270 P. (2d) 975.

[fol. 2589] Neither does Houston's present opinion, that he made a mistake (based as it is on his assumption of the authenticity of exhibit No. 22), nullify the inference to be drawn from his original entry on his work sheet, which he believed to be correct at that time.

All of the evidence by both sides on the issue of how this nineteen-hundred-dollar item had been carried in the appellant's records was before the jury. Whether or not Houston's original entry on his work sheet was a correct one, or was an error, was for the jury. Burrill v. S. N. Wilcox Lumber Co. (1887), 65 Mich. 571, 32 N. W. 824.

VI. Separation of the Jury.

The defendant invoked RCW 10.49.110, prohibiting the separation of jurors. He argues that the jurors were permitted to separate, and that prejudice to the defendant is conclusively presumed therefrom.

The specific instances referred to in plaintiff's brief are

four:

- 1. Juror No. 3 was observed talking with two nonjurors, a woman and an elderly man.
 - 2 Juror Eleanor Eaken conversed with her husband.
- 3. On one visit by her husband to juror Eleanor Eaken, he was accompanied by their son.
 - 4. Juror Frank Walton conversed with his wife.

In every instance, the claimed separation was no more than a communication with a nonjuror (wife, husband, or [fol. 2590] son of the juror) relative to family matters or the needs of the juror; it was, in each instance, in the presence of a bailiff, and there was no physical separation from the other jurors.

In our earlier decisions we placed a very narrow meaning on the word "separation." In State v. Morden, supra, the state and the defendant had agreed that over a weekend the jurors in the charge of the bailiffs, might attend a church service and go to a theatre. On Sunday afternoon, eleven jurors, with one of the bailiffs, went to see a movie.

The other juror, having (p. 475)

"... conscientious scruples against attending places of amusement on Sunday, remained outside within the portice or porch of the theater building during that period...

"Affidavits of the juror and bailiff who remained outside the theater were produced to the effect that, during the period of separation, they had no conversa-

tion with any one. . . . "

We held that this was a separation within the purview of the statute.

By 1918, we were questioning that interpretation; and in State v. Harris (1918), 99 Wash. 475, 477, 169 Pac. 971, we said,

"... The statute making women eligible to jury service of itself necessitated, and was of itself, a change in the existing system relating to the separation of juries. In trials protracted over considerable periods of time, the rules of society, propriety, and common decency require that mixed juries be allowed to separate according to sexes at stated intervals during its

progress.

"It may be questioned, moreover, whether the courts have not placed a too narrow construction on the word 'separate' as used in the statutes. The object and purpose of keeping them sequestered is, and has always been, to keep them from being influenced with reference to the matters given them in charge, by ulterior practices. This purpose is as well accomplished when the jury are kept singly under the charge of sworn officers of the court as it is when they are kept under like officers in a body."

Later decisions have further deviated from the strict in [fol. 2591] terpretation of the Morden case, and have permitted the physical separation of jurors in the custody of bailiffs, or under circumstances where no possible prejudice could result. State v. Hunter (1935), 183 Wash. 143, 48 P. (2d) 262; State v. Stratton (1933), 172 Wash. 378,

20 P. (2d) 596.

While conversations, such as occurred in this case at the open door of the jury dormitory and on one occasion on the street near the court house door as the jurors were going to dinner, should be avoided, they do not constitute a separation of the jury, but, rather, "Communication with or by jurors." It was so categorized in State v. Rose (1953), 43 Wn. (2d) 553, 262 P. (2d) 194, where jury misconduct was discussed under three categories: (a) Entry of jury room by unauthorized person with a document for a juror; (b) Communications with or by jurors; (c) Separation of jury.

But, giving the appellant the benefit of the more rigid rules and the prima facie presumption of prejudice that follows upon a separation or upon a communication between a juror and a nonjuror, the burden is on the state to show that no prejudice actually resulted. State v. Rose, supra; State v. Smith (1953), 43 Wn. (2d) 307, 261 P. (2d) 109; State v. Amundsen (1950), 37 Wn. (2d) 356, 223 P. (2d) 1067.

Here, the state did sustain that burden and established that every conversation between a juror and a nonjuror was in the presence of a bailiff, and that the subject matters of the conversations could not have been in any way preju-[fol. 2592] dicial to the appellant. Under such circumstances, we will not disturb the order of the trial court in refusing to grant a new trial. State v. Smith, supra; State v. Carroll (1922), 119 Wash. 623, 206 Pac. 563; State v. White (1920), 113 Wash. 416, 194 Pac. 390.

VII. Deprivation of a Peremptory Challenge.

Appellant arges that Raymond Kraatz, contrary to his testimony on voir dire, was actually hostile to the Teamsters Union. The appellant was forced to use a peremptory

challenge to keep Kraatz off of the jury.

Evidence of the prospective juror's claimed duplicity was brought to the attention of the trial court for the first time in the motion for a new trial. It is the appellant's contention that had the juror's true attitude been known to the court during the voir dire examination of Kraatz, he would have been excused for cause; and appellant would have thus been saved a peremptory challenge.

The purpose of the voir dire examination is to enable the parties to learn the state of mind of the prospective juror, and to demonstrate, if possible, that the prospective juror is subject to a challenge for cause. The appellant does not contend that any basis was developed for a challenge for

cause in the examination of Kraatz.

Had Kraatz served on the jury, and had it developed that the appellant had been deceived by his false answers to questions on voir dire, an entirely different question [fol. 2593] would be presented; but, even were that the claimed situation, the bias of the juror would have to be

established by something more reliable than hearsay affidavits. Casey v. Williams (1955), 47 Wn. (2d) 255, 287 P. (2d) 343; State v. Maxfield (1955), 46 Wn. (2d) 822, 285 P. (2d) 887; State v. Patterson, supra; State v. Dalton (1930), 158 Wash. 144, 290 Pac. 989; State v. Simmons (1909), 52 Wash. 132, 100 Pac. 269; State v. Wilson (1906), 42 Wash. 56, 84 Pac. 409.

Here, Kraatz did not deceive the appellant; he was, in fact, excused. That, after all, is what peremptory challenges are for. The purpose of such challenges is to get off of the jury the person whose bias a party knows or suspects but can't establish on his voir dire examination. If we assume the bias of Kraatz, it would be a new development in the field of criminal law to hold that a defendant, who had used all of his peremptory challenges, was entitled to a new trial if he could show, at some time before the motion for a new trial was argued, that one of the prospective jurors (excused by a peremptory challenge) had an actual bias.

Appellant has presented no authority for such a holding, and we are satisfied there is none.

VIII. There Was Insufficient Evidence to Convict.

The statute under which this prosecution is brought is as follows:

"Every person who, with intent to deprive or defraud the owner thereof—

"(3) Having any property in his possession, cus-[fol. 2594] tody or control, as bailee, . . . agent, . . . trustee, . . . or officer of any . . . association or corporation, . . . shall secrete, withhold or appropriate the same to his own use . . .

"Steals such property and shall be guilty of larceny." RCW 9.54.010.

It is appellant's contention that, at most, the state's case showed receipt by him of the nineteen hundred dollars from the sale of the car, and a failure to account therefor; and, since the intent to appropriate the money and deprive the owner of it was not established, there was not sufficient evidence to prove embezzlement.

A similar contention was made in State v. Campbell (1918), 99 Wash. 502, 164 Pac. 968, where the prosecution was under the same statute. A syllabus in that case states

the facts and applicable rule concisely:

"... In a prosecution for the embezzlement of the proceeds of a note and mortgage delivered to the accused for the purpose of collection, intent to deprive the owner of the property is sufficiently established by the fact that accused sold the note and mortgage to a third person and converted the proceeds to his own use."

The following quotation from the opinion amplifies the reasoning summarized in the syllabus (pp. 504, 505):

"It is next urged that there was no direct and specific evidence tending to prove an intent on the part of appellant to deprive Mrs. Fuchs of her property. No instrument has yet been invented by means of which the inner workings of the human mind may be revealed; hence criminal intent, in the vast majority of cases, is not capable of direct and positive proof. In the absence of an express declaration thereof, a criminal purpose can only be established as an inference from a tion and conduct—the external manifestations of design. Since, in embezzlement, the necessary effect of the wrongful conversion is to deprive the owner of [fol. 2595] his property, the act of appropriation gives. rise to the inference that the perpetrator intended the inevitable result of his conduct. In this case, the intent to defraud was evidenced by the act of the appellant in selling the note and mortgage to a third person and converting the proceeds to his own use or to the use of Colin Campbell Security Company, instead of faithfully executing his trust by collecting the amount se0

cured by the mortgage and accounting therefor to Mrs. Fuchs. . . . "

A stronger case for the appellant-defendant was made in State v. Jakubowski (1913), 77 Wash. 78, 87, 137 Pac. 448, where we said,

"... In our statement of the case, we have detailed every salient feature of the evidence, and while it appears to this court as persuasively negativing a criminal intention on the appellant's part, its weight and the credibility of the appellant and his witnesses were for the jury. As we have seen, there was adduced by the state competent evidence tending to prove every element of the crime as charged. The trial court denied the appellant's motion in arrest of judgment and refused to grant a new trial upon conflicting evidence. In such a case, whatever our own opinion as to the weight or preponderance of the evidence, we cannot reverse the action of both the trial court and the jury. To do so would be to invade the province of both. It a would be to substitute our judgment for that of the jury as to a question of fact upon conflicting evidence, and our discretion for that reposed by statute in the trial court.

"This court has heretofore announced that it will not disturb verdicts of this character, on the ground of alleged insufficiency of evidence, where there is evidence to support the verdict, although it may not be of the most convincing kind. Both the jury and the trial court have the opportunity to hear and see the several witnesses, to note their manner as to apparent candor and truthfulness, and are therefore better prepared to pass upon the credibility of their testimony than is this court with only a bare record of the words spoken by the witnesses. The weight of the evidence having been first passed upon by the jury, and next by the trial judge in denying the motion for new trial, we shall not undertake to say that they were wrong.' State v. Ripley, 32 Wash. 182, 72 Pac. 1036."

See also State v. Dudman (1922), 119 Wash. 522, 205 Pac. 848.

The court instructed the jury (and no error has been assigned to the instruction):

[fol. 2596] "I instruct you that the intent to deprive or defraud, which is one of the elements of the offense of grand larceny, as charged in the Indictment in this case, must be proved by competent evidence beyond a reasonable doubt. However, it need not be proved by direct and positive evidence, but the existence of such intent may be inferred from the acts of the parties and the facts and circumstances surrounding them." Instruction No. 5.

It is unnecessary to again review the evidence in this case, nor is it our responsibility to weight it. There was no doubt in the mind of the trial court, nor is there in ours, that the jury was entitled to infer the intent to deprive the Western Conference of Teamsters of the nineteen hundred dollars from the acts (which includes failure to act) of the appellant.

The evidence shows that the appellant knew as early as February, 1956, that the nineteen hundred dollars had been deposited in his bank account; that more than a year later it had not been paid over to the owner. The only semblance of an explanation came in the state's case, through the testimony of William F. Devin, as to statements made by the appellant before the grand jury, i.e., that not knowing to whom the car belonged, he had given nineteen hundred dollars in cash to Fred Verschueren, Jr., with instructions to apply it to the proper account. The jury was not obligated to believe that explanation.

The appellant was clearly confronted with a prima facie case, and the defense presented did no more than suggest possibilities of what appellant might have done or might have intended to do with the nineteen hundred dollars, by [fol. 2597] way of explanation of why it had not been paid

over to its rightful owner.

There is no merit in the assignments of error raising the issue of the insufficiency of the evidence to sustain the verdict.

IX. Misconduct of the Deputy Prosecuting Attorney in Argument to the Jury.

Two statements made by the deputy prosecuting attorney, in the course of rebuttal argument, are urged as error.

The one of which appellant makes the most bitter complaint is (p. 1332),

"But now we get down to the point where everything is deadly serious. You have a tremendous responsibility. Counsel refers to all of this terrible publicity. It is true. The eyes of the entire world probably are upon you right now and the evidence that has been presented here against this defendant has been widespread. There is no question about that. You should return a proper verdict, that is your responsibility. You are the ones that are going to have to look at yourselves the rest of your lives. You are the ones that are going to have to be with your neighbors and friends and hold your head up high and say, 'I did what my heart and mind told me.' You are not to be influenced at all by any sympathy or prejudice. Nothing at all can be considered by you except the evidence from this witness stand."

The appellant says that the purpose of that statement was to remind the jury of the great amount of adverse publicity against him, and to remind them that they ought to take into account the public clamor and its desire that the appellant be convicted; and, further, to remind them that if they returned a verdict of not guilty, they would be held up to public disfavor and ridicule.

We do not so interpret the statement by the deputy prosecuting attorney. Comment on the matter of publicity was [fol. 2598] invited by the emphasis that appellant's counseled on it in his argument in such statements as (p. 1266),

"... the rumors and the gossip and the frenzied, insane propaganda that could have been created only by somebody with the insanity of a Goebels..."

and,

"... the tremendous amount of unfavorable publicity that has been circulated about Mr. Beck, almost to the point of saturation of the public press and the radio and the newspapers, repeated and repeated and repeated; the Nazi system."

Even in the portion of the argument objected to, the deputy prosecuting attorney tells the jury,

"... You are not to be influenced at all by any sympathy or prejudice. Nothing at all can be considered by you except the evidence from this witness stand."

The other statement of the deputy prosecuting attorney, concerning which complaint is made, has to be placed in context to be understoood.

Appellant's counsel had been at some pains to explain to the jury why he did not call Fred Verschueren, Jr., as a witness. (Verschueren, Jr. was the person to whom appellant supposedly had given the nineteen hundred dollars to turn over to the owner of the 1952 Cadillac.) Commenting on counsel's explanation, the deputy prosecuting attorney said (p. 1316),

"He tells us that he wants to protect Mr. Verschueren, Jr. Mr. Verschueren, Jr., you will recall, testified before the grand jury. There was testimony to that effect here. Mr. Beck testified before the grand jury and the grand jury wasn't made up of four ogres who were breathing down the neck of anybody. It was made up of seventeen people just like you, seventeen citizens selected to sit on that grand jury and seventeen people [fol. 2599] after they heard the testimony of Mr. Regal and Mr. Verschueren, Jr. returned an indictment and that is what you are trying here today.

"Now the question is, in Mr. Burdell's strategy, should he take Mr. Beck and put him on the stand and have him explain this which he didn't do and could he bring Mr. Verschueren, Jr. in to have him

explain this which he didn't do, because he felt most likely, we can assume he felt this way, if I do that, I really am sunk, so what I have to do is to try to talk the jury into assuming things from these little bits of evidence that I can bring in with witnesses of some stature in the community." (This is taken from the statement of facts. Italics are ours.)

Appellant complains of the italicized portion. (As quoted in appellant's brief, Mr. Regal is changed to Mr. Beck in the next to the last line of the italicized portion; and we will assume, for present purposes, the change to be correct.) Appellant urges that the italicized portion of the argument throws the weight and prestige of the grand jury into the scale against him. Read in context, as an answer to the appellants' explanation for not calling Fred Verschueren, Jr. as a witness, it is a proper response. We have consistently held statements of a prosecuting attorney, which would ordinarily be improper, will not be regarded as prejudicial error where they are in answer to and are invited by the argument made by defense counsel. State v. Collins, supra; State v. Taylor (1955), 47 Wn. (2d) 213, 287 P. (2d) 298; State v. Harold (1954), 45 Wn. (2d) 505, 275 P. (2d) 895; State v. Van Luven, supra; State v. Wright, supra.

Appellant does not argue, under this division of his brief, his other claim of misconduct of counsel: that the prosecutor, by an illustration used in argument (i.e., that one [fol. 2600] who stole a bracelet before a court room full of people was entitled to the presumption of innocence if he went to trial), destroyed any effect of the presumption of innocence, and thereby denied him the benefit of that pre-

sumption.

We do not agree. Prosecutors have been using similar illustrations for many years, but it has never before been urged as a denial of due process.

Appellant argues this in his division X, but we have placed it with other claimed misconduct of counsel.

X. Instructions Given and Refused:

Up to this point, we have accepted, in substance, the headings which the appellant has given to the divisions in

his brief. Appellant's heading for division X, however, is, in effect, Denial of Due Process. He reargues briefly the errors already urged with reference to the grand jury proceeding, and asserts that the accumulative effect of the many errors constitutes a denial of due process. Having found no prejudicial error in divisions I to IX, we are not impressed with their cumulative effect.

We will, therefore, cover only the matters not heretofore urged. Appellant assigned error to instructions Nos. 2, 3, 14, and 16, but argues only as to Nos. 3 and 16. Appellant assigned errors to the failure to give his requested instruc-

tions Nos. 10, 14, and 38.

It is urged that the trial court should not have given instruction No. 3, because it merely emphasized the most [fol. 2601] favorable aspects for the state—already adequately stated in instruction No.?

Instruction No. 2 was the comprehensive statement of all of the elements of the offense which the state must prove

before the jury could convict.

Instruction No. 3 is a definition of the crime of grand larceny by embezzlement, substantially in the words of the

statute. RCW 9.84.010(3); RCW 9.54.090(6).

Under the facts of this case it was not error to instruct in the language of the statute. State v. Sedam (1955), 46 Wn. (2d) 725, 284 P. (2d) 292; State v. Bixby (1947), 27 Wn. (2d) 144, 168, 177 P. (2d) 689; State v. Verbon (1932),

167 Wash. 140, 8 P. (2d) 1083.

Appellant points out no error in instruction No. 16 on presumption of innocence and reasonable doubt, but urges that his instruction No. 10 on that subject was preferable, particularly in view of the argument of the deputy prosecutor on the presumption of innocence. (The trial court had no way of knowing when the instructions were given what the deputy prosecutor's argument would be.)

The trial court's instruction was a proper statement of the law, and seems preferable to us to the much longer and more argumentive instruction proposed by the appellant. It certainly was not error to refuse a requested instruction where the principle of law stated therein was adequately covered by the instruction given. State v. Myers (1959), [fol. 2602] 53 Wn. (2d) 446, 334 P. (2d) 536, and numerous cases therein cited.

It is urged that, since the trial court gave instruction No. 3 (the statutory definition of grand larceny by embezzlement), it should have given appellant's proposed instruction No. 14 to the effect that the defendant could not be guilty unless there was a "definite intent to take the proceeds [of the sale of the Cadillac] from the Western Conference of Teamsters and deprive it of the money."

The element of intent was stated in instruction No. 2, and emphasized and re-emphasized in instructions Nos. 5, 7,

and 9.

The jury was more than adequately instructed on the necessity of intent, and the trial court did not err in refusing to give appellant's proposed instruction No. 14. State v. Myers, supra.

Appellant's proposed instruction No. 38, after stating

the presumption of innocence, said,

"This must especially be kept in mind when any person has received unfavorable nation-wide publicity in non-judicial proceedings which have the tendency to be one-sided because the party involved has no opportunity to make any adequate defense."

In his brief, appellant says,

"Finally, the failure of the court to grant appellant's instruction No. 38... was certainly error in view of the fact no other instruction of the court told the jury to disregard the unprecedented publicity."

No authority is cited, and there is no argument beyond the statement quoted from the brief. One could not refer to this as a slanted instruction, because it is practically per-[fol. 2603] pendicular. There was no evidence in the case to which the instruction applied. The matter of unprecedented publicity was, as we have seen, injected into the case by appellant's counsel in argument to the jury. The trial court properly refused to give such an instruction. State v. Hart (1946), 26 Wn. (2d) 776, 175 P. (2d) 944; State v. Powell (1927), 142 Wash. 463, 253 Pac. 645.

The length of the record (2,400 pages), and the number and novelty of many of the issues raised on the appeal, has unduly delayed the determination of this nineteen hundred dollar grand-larceny-by-embezzlement case.

We find ample evidence to sustain the verdict and no prejudicial error in the record. The judgment appealed

from is affirmed.

Hill, J.

We concur:

Weaver, C.J., Mallery, J., Ott, J.

[fol. 2604] 34636

Dosworth, J. (dissenting)—In my opinion, the majority, in upholding appellant's indictment, has reached a result which is directly contrary to the settled policy of this state as determined by our legislature with respect to the impaneling of grand juries. Therefore, I cannot agree with the majority holding that appellant was not entitled, under the lows of this state, to have a grand jury composed of

impartial and unprejudiced jurors.

In considering appellant's motion to quash the indictment, we must bear in mind that appellant was indicted by a grand jury impaneled in the state of Washington and not by a Federal grand jury or a grand jury of a state whose statutes differ from ours. However, the majority holds that the superior court need not inquire whether the prospective grand jurors entertain any prejudice against the person whose conduct the court, in its charge, directs them to investigate, and bases its holding upon decisions of the Federal courts whose grand juries need not be composed of impartial and unprejudiced jurors because no statute or rule of court so prescribes.

To fully understand the very serious problem presented by the three assignments of error quoted below, it is necessary to consider certain material facts shown by the record, which are not referred to in the majority opinion, presumably because of its view that everything that happened prior to the trial of the case is immaterial. In order to

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properly consider the legal question which is presented, I consider it necessary to state these facts in some detail [fol. 2605] before coming to a discussion of the applicable statutes and decisions of this court.

The assignments of error with which we are first con-

cerned are as follows:

"25. The court denied appellant's rights to a fair and impartial grand jury.

"26. The court erred in prejudicing the grand jury against appellant by its charge.

"28. The court erred in failing to set aside the indictment for misconduct of the prosecutor before the grand jury."

In passing upon the merits of these assignments, we should have in mind the unique situation which existed during the three months immediately preceding the con-

vening of the grand jury.

The grand jury, which returned the indictment herein, was convened on May 20, 1957. Several months prior thereto, the Senate Select Committee on Improper Activities in the Labor-Management Field (commonly referred to as the Senate Rackets Investigating Committee) commenced an investigation of certain labor unions and their officers. Needless to say, these hearings were not of a judicial nature. Ordinary rules of evidence were not applicable, nor were the witnesses subject to cross-examination. The stated object of the committee hearing was to obtain information which would aid Congress in enacting legislation bearing upon labor-management relations.

widely reported by the various news media. During the period of approximately three months prior to the impanelment of the grand jury, appellant was the principal subject of charges of misconduct made in the course of the hearings. Because appellant was then, and since childhood had been, a resident of Seattle, and for the preceding thirty [fol. 2606] years had been a labor leader of national reputs-

tion, this area was the focal point for the dissemination of the highly derogatory publicity concerning appellant which resulted from the committee hearings. The local press featured front-page headlines in large, heavy type, in which the more sensational excerpts from that day's testimony or other proceedings of the committee were flamboyantly displayed. The local radio and television stations carried the same material, and in several instances both media reported the hearings "live" from Washington, D. C.

On March 26, 1957, and again on the following day, appellant, accompanied by counsel, appeared as a witness before the committee. Upon the advice of counsel, appellant informed the committee that he would assert the privilege against self-incrimination guaranteed him by the Fifth Amendment to the United States Constitution because of the fact that he was currently being investigated for possible violations of Federal law. The committee posed questions to appellant which he refused to answer (on the advice of counsel) on the ground that an answer might tend to incriminate him. He did so a total of one hundred fifty times during the two days of his interrogation by the committee.

On May 2, 1957, appellant was indicted in Tacoma by a Federal grand jury for alleged income-tax invasion.

On May 3, 1957, there appeared on the first page of the seattle Post-Intelligencer a statement to the effect that

¹Prior to December, 1952, appellant was for many years president of the Western Conference of Teamsters, which covered eleven waters states. He maintained his office in Scattle. In December, 1862, appellant became president of the International Brotherhood of Teamsters (a labor union having one and one half million members), which maintained its principal office in Washington, D. C. Thereafter, appellant continued to maintain an office in Scattle and held the official title of president emeritus of the Western Conference.

An advertisement by a local television station appeared in the super stating that it would report the proceedings of the Senate Committee regarding appellant exclusively "live" on Wednesday, March 27, 1957. The advertisement showed the station was going to devote approximately 9¾ hours of that day's programming to both reproductions of the Senate hearings and news comments thereon,

the prosecuting attorney had decided to name special prose-[fol. 2607] cutors to assist him in conducting the grand jury proceedings. This article contained the following statement:

"The grand jury is to investigate possible misuse of Teamsters Union funds by international president Dave Beck..."

On May 8, 1957, appellant was recalled to testify before the Senate Committee, where he was again subjected to a lengthy interrogation, during which appellant again invoked the Fifth Amendment, upon the advice of counsel.

approximately sixty times.

During the course of these proceedings, the committee chairman, its counsel, and some of its members, orally stated certain conclusions and expressed opinions regarding the conduct of appellant. These comments, which were extremely derogatory to appellant, were widely circulated by all news media throughout the United States, and particularly in the Seattle area. In these comments, appellant was characterized as a thief, and it was asserted that he was guilty of fraud and other illegal conduct with respect to his management of the affairs of the teamsters' union as its principal officer in the eleven western states, and later in his position as its international president.

These conclusions and opinions (particularly those expressed by Senator McClellan, the chairman of the committee) were displayed by local newspapers on the front page in prominent headlines. The following are a few of the comments which were referred to in such headlines

which appeared in Seattle newspapers:

"TEAMSTERS' CASH KEPT GOING TO BECK AFTER HE BECAME UNION PRESIDENT, SAYS PROBER." Seattle Times, March 23, 1957.

"BECK'S USE OF \$85,000 MAY BE THEFT, SAYS

McCLELLAN." Seattle Times, March 27, 1957.

"BECK GIVES 'BLACK EYE' TO LABOR, SAYS SEN. McNAMARA." Seattle Times, March 27, 1957. "SENATE PROBE LIFTS LID ON BECK BEEB BUSINESS—USE OF UNION MONEY RELATED." Seattle Post-Intelligencer, May 9, 1957.

Substantial portions of the committee proceedings relating to these charges were also reproduced in the course of news broadcasts on local radio and television stations.

[fol. 2608] The amount, intensity, and derogatory nature of the publicity received by appellant during this period is without precedent in the state of Washington. A Seattle newspaper carried a news item reporting that the switchboard of a local radio station that had broadcast the committee proceedings on the preceding day was jammed with calls, and that the officials of the station characterized the response to the broadcast on the part of the public as "astounding," and that such response was greater than that resulting from any other broadcast ever aired by them. The serious accusations made by United States senators in the committee hearings are generally regarded by laymen as being official charges (which appellant had refused to answer'), and thus the impression was created among the general public that appellant had been found guilty of a crime. The natural effect of this publicity was that, in the eyes of the average citizen, the character of appellant had been thoroughly discredited in the Seattle area on or before May 20, 1957.

In view of the circumstances shown by the undisputed facts stated in the affidavits in this case, I think it would be unrealistic to believe that a very substantial number of the citizens of the community had not adopted, consciously or unconsciously, an attitude of bias and prejudice toward appellant at the time the grand jury was convened. If ever there was a case which required the most stringent observance of every safeguard known to the law to protect a citizen against bias and prejudice, this was it.

On July 30, 1957, appellant (who had been indicted on July 12th) filed a motion to allow him to publish and inspect [fol. 2609] a transcript of both the grand jury voir dire and the grand jury proceedings. Appellant filed an amended motion on September 16, 1957, supported by his counsel's affidavit, stating on information and belief that the grand jury was prejudiced and biased. On September 20, 1957,

Appellant, in so doing, was exercising a right guaranteed him by the United States Constitution. See Hoffman v. United States, 314 U. S. 479, 95 L. Ed. 1118, 71 S. Ct. 814.

the trial court entered an order granting appellant the right to publish and inspect the open court proceedings of the grand jury (i.e. the voir dire and the court's charge).

On October 18, 1957, appellant filed, along with other pretrial motions not pertinent hereto, a motion to set aside and dismiss the indictment. This motion was accompanied by his counsel's affidavit, attached to which was a compilation of photostatic copies of newspaper and magazine articles (total 139 pages) showing the nature and extent of the adverse publicity concerning appellant. On the same day, appellant also filed a challenge to the grand jury upon the grounds

"... that the court which impaneled said grand jury made no determination as to whether a state of mind existed on the part of any juror such as would render him unable to act impartially and without prejudice."

All of these motions were argued before the superior court on November 4, 1957, and on November 7, 1957, the court entered an order denying both the motion to set aside and dismiss the indictment and the challenge to the grand jury, but directing that the testimony of Fred Verschueren, Jr., before the grand jury be transcribed, sealed, and retained in the case file, subject to disclosure only in the event of a conviction and subsequent appeal. The state's application to this court for a writ of prohibition to prevent the entry of this order was denied.

In considering the three assignments of error referred to above, I shall discuss (1) the impanelment of the grand jury, (2) the charge given the grand jury, and (3) the alleged [fol. 2610] misconduct of the prosecuting officers in the

examination of a witness before the grand jury.

The Impanelment

Within five days before the prospective members of the grand jury reported to the court, the Seattle newspapers published articles with these headlines:

"BECK APPARENTLY STOLE \$300,000 FROM UNION, SAYS PROBE AIDE."

Underneath this headline is the following statement:

"Labor Probe at a Glance:

"Robert Kennedy, counsel for the Senate Rackets-Investigating Committee, said it would appear that \$300,000 to \$400,000 which Dave Beck 'borrowed' from the Teamsters actually was 'stolen.' (See below.)" Seattle Times, May 15, 1957.

"BECK MISUSED UNION POSITION IN 52 IN-STANCES, SAYS PROBER." (There then follows in the body of the article a detailed list of 52 instances of alleged misuse by appellant of his union position.) Seattle Times, May 16, 1957.

"SENATE DOCUMENT CHARGES BECK TOOK' \$300,000." Seattle Post Intelligencer, May 17,

1957.

"McCLELLAN BLASTS BECK FOR 'RAS-CALITY.'" Seattle Post Intelligencer, May 17, 1957.

The grand jury was impaneled on May 20, 1957. After explaining the general qualifications of grand jurors, the court examined each prospective member as to his or her particular qualifications to act as grand juror. These questions related to the juror's occupation, whether he had ever been a member of the teamsters' union (or any affiliate thereof) or an officer in any union. He was further asked if he were acquainted with any officer of the teamsters' union. One prospective juror was asked if he knew appellant and he replied in the negative. The final question which the court asked each prospective juror was:

"Is there anything about sitting on this grand jury that might embarrass you at all?"

The court excused five prospective jurors' and examined five more in the same manner. The seventeen persons then

^{&#}x27;Two of the five prospective jurors excused by the court volunteered that they had been prejudiced by reading newspaper articles and seeing television broadcasts. Another was asked if he knew appellant and he replied in the negative. This was the only instance of the court's referring to appellant by name, although the court's later reference to the president of the teamsters' union undoubtedly was understood by the jurors to mean appellant.

[fol. 2611] in the jury box were accepted as constituting the grand jury and the court administered the oath to them.

It is to be noted that none of the jurors who were accepted was asked if he had read anything about the alleged activities of the officers of the teamsters' union in the Seattle newspapers or in nationally circulated magazines, particularly those articles relating to the proceedings before the Senate Committee. Neither was any juror asked if he had heard any part of these proceedings on the radio or had seen them "live" on television. Nor was there any interrogation of the jurors had to ascertain whether any of them had heard or participated in any discussions concerning these matters. The general question as to whether the jurors would be embarrassed in any way in sitting on this grand jury was, in my opinion, not sufficient to disclose any bias or prejudice (conscious or unconscious) on the part of the jurors.

In view of the unprecedented publicity which had been given to the Senate Committee hearings within the three months preceding the impanelment of the grand jury, I think that the jurces should have been interrogated for the existence of possible bias and prejudice against the officers

of the teamsters' union.

The authorities bearing on this subject will be discussed after I review the court's charge to the grand jury.

The Court's Charge

The court explained the historical background and functions of the grand jury, and commented on the fact that it had been used so infrequently in this state that most people, even lawyers, were unfamiliar with its procedure and underlying purposes. The court then outlined the man-[fol. 2612] ner in which the grand jury was to perform its functions.

Th court stated the reasons for calling this grand jury as follows:

"We come now to the purpose of this grand jury and the reasons which the judges of this court thought sufficient to justify the expense to the county, and the inconvenience to and sacrifice by you, which this grand

jury session will require.

"It seems unnecessary to review the recent testimony before a Senate Investigating Committee except to say that disclosures have been made indicating that officers of the Teamsters Union have, through trick and device, embezzled or stolen hundreds of thousands of dollars of the funds of that union-money which had come to the union from the dues of its members. It has been alleged that many of these transactions, through which the money was siphoned out of the union treasury, occurred in King County. Such crimes, if committed, cannot be punished under Federal law, or under any law other than that of the State of Washington, and prosecution must take place in King County. The necessary criminal charges can only be brought in this county upon indictment by the grand jury or information filed by the prosecuting attorney.

"The president of the Teamsters Union has publicly declared that the money he received from the union was a loan which he has repaid. This presents a question of

fact, the truth of which is for you to ascertain.

"You may find that many of the transactions happened more than three years ago; this would raise the question of the statute of limitations, which ordinarily bars a prosecution for larceny after three years. There are some instances, however, where the period is extended. This is a question of law and you should be guided by the advice of the prosecutors on this and similar questions. Your investigation may conceivably result in the adoption of better standards of conduct for union officials.

"Some other inquiries suggested by the Senate investigation are the relationship between the officers of the Teamsters Union and a certain insurance broker; an alleged conspiracy between business men and Teamster officials in fixing prices; and the influence wielded by Teamster officers through campaign contributions to public officials.

"To completely investigate all of these items may be beyond the energy and endurance of yourselves, the prosecutors and their investigating staff. The financial burden of such a complete investigation may be beyond the resources of King County. I urge you to do all that you can within practical limitations to ascertain the truth or falsity of these charges."

After designating the foreman of the grand jury, the court said:

"Now, members of the grand jury, that is all I have to say to you in the way of a formal charge. I think you all realize that your names have been selected right from the jury list which in turn is picked from the voters' registration books. You have a most serious [fol. 2613] task to perform and I know you realize it is being performed, and is to be performed, by a grand jury picked at random from among the citizens in this community, and thus we hope to keep the law close to the people. It is a tremendous responsibility, and I wish you well in your work."

The court then introduced the prosecuting attorney, one regular deputy, two special prosecuting attorneys for the grand jury and the official court reporter, and terminated

its charge."

While the charge contained this admonition, "Your deliberations are secret and you are forbidden by law to disclose the vote, or even the discussion, on any question before you," no warning was given the jurors about refraining from reading newspaper or magazine articles relating to officers of the teamsters' union while they were serving as grand jurors; nor was there any admonition given the grand jurors about not listening to radio or television programs pertaining to the conduct of these officers.

On the afternoon of the day that the grand jury was selected and sworn, two articles appeared in the Seattle

Times concerning appellant. The headlines read:

Appellant, in assignment of error No. 27, asserts that unauthorized persons appeared before the grand jury, and contends that the indictment should be dismissed for that reason. In view of the conclusion I have reached on other assignments, I do not find it necessary to discuss No. 27.

"BECK OUSTED FROM A. F. L.-C. I. O. POSTS— TEAMSTER CHIEF FOUND GUILTY OF 'VIO-LATING TRUST.'" Seattle Times, May 20, 1957.

"SOLON DENIES INFRINGING BECK'S RIGHTS." ("'May I say that the committee has not convicted Mr. Beck of any crime, although it is my belief that he has committed many criminal offenses.'") Seattle Times, May 20, 1957.

The following morning, the Seattle Post Intelligencer carried this headline:

"McCLELLAN LAYS 'MANY CRIMINAL' ACTS TO BECK." Seattle Post Intelligencer, May 21, 1957.

Between that date (May 21, 1957) and July 12, 1957, when appellant was indicted, two nationally circulated [fol. 2614] weekly magazines published articles entitled:

"THE CASE AGAINST DAVE BECK AS SENA-TORS SEE IT." U. S. News & World Report, May 24, 1957.

"A CITY ASHAMED—DAVE BECK IS ON SE-ATTLE'S CONSCIENCE." Time, May 27, 1957.

I shall now discuss the arguments of counsel relating to

assignments of error No. 25 and No. 26.

The motion to set aside and dismiss the indictment was based upon RCW 10.40.070, which provides that an indictment must be set aside when it appears:

"(4) That the grand jury were not selected, drawn, summoned, impaneled, or sworn as prescribed by law."

It is appellant's contention that the grand jury was not impaneled as prescribed by law in that there was no interrogation by the trial court designed to enable it to determine whether or not any juror possessed a state of mind which would render him unable to act impartially and without prejudice. To this is added the further contention that the trial court's charge to the grand jury was prejudicial to appellant.

My examination of the portion of the record relating to these matters convinces me that appellant's contentions are well taken.

The statutes of this state relating to grand juries clearly demonstrate the legislative intent to adopt the principle that the grand jury must be impartial and unprejudiced.

"No complainant who may institute a prosecution shall be competent to be present at the deliberations of a grand jury, or vote for the finding of an indictment." RCW 10.28.140.

"Challenges to individual grand jurors may be made by such person for reason of want of qualification to sit as such juror; and when, in the opinion of the court, a state of mind exists in the juror, such as would render him unable to act impartially and without prejudice." RCW 10.28.030.

[fol. 2615] In Watts v. Washington Territory, 1 Wash. Terr. 409, this court, in overruling a challenge to the grand jury proceedings, pointed out that there had been no claim by the defendant that any of the grand jurors were biased or prejudiced.

In State ex rel. Murphy v. Superior Court, 82 Wash. 284, 144 Pac. 32 (1914), we upheld the right of the trial judge

to excuse certain prospective jurors and stated:

"That it was the policy of the legislature to preserve the right to have an unbiased and unprejudiced jury and grand jury, and that no suspicion should attach to the manner of its selection in all cases, cannot be questioned...." (Italics mine.)

In State v. Guthrie, 185 Wash. 464, 56 P. (2d) 160 (1936), this court, in denying a motion to quash an indictment, cited the Murphy case, supra, and the above quotation therefrom with approval, and discussed the statute now codified as RCW 10.28.030 (quoted above) as follows:

"While this section may be said to relate to challenges made by interested persons, it is not to be construed as denying to the court the right, upon its own motion, to excuse a juror deemed to be disqualified or incompetent. To deny this right would be out of harmony with the policy of the law, which charges the court with the responsibility of insuring that qualified and impartial grand jurors are secured." (Italics mine.)

Thus, our consideration of this case should be based upon the premise that appellant, as a matter of law, was entitled to an impartial and unprejudiced grand jury. Although the state in this case does not take issue with this premise, the [fol. 2616] majority holds that appellant is not concerned with anything that takes place before his trial begins.

The state has filed a comprehensive brief consisting of one hundred fifty pages containing the following answer to appellant's argument regarding his right to an impartial and unprejudiced grand jury:

"Appellant asserts that the denial of his motion to set aside the indictment constituted error under our statutes and constitution

and the constitution of the United States (App. Br. 35).

"Appellant cites . . . [citations omitted]. Except for citing the well-recognized rule that grand juries should be impartial and unprejudiced (App. Br. 37), the cases are not otherwise applicable." (Malies mine.)

At page 48 of the state's brief, it is stated:

"It is patent that the indictment herein was endorsed 'a true bill' and signed by the foreman of the grand jury and that it was presented and marked 'filed' (Tr. 1). Thus, under the statute, the only grounds defendant could raise on a motion to set aside the indictment were those enumerated in subsections (3) and (4) of RCW 10.47.070. It is submitted that none of the other grounds enumerated in defendant's motion to set aside and dismiss the

indictment were provided for by our statutes.

"The grand jurors were selected, drawn, summoned, impaneled and sworn as prescribed by law. Defendant in his motions and affidavits made no allegation relating to the selection, drawing, summoning, impanelment and swearing of the grand jury except his assertion that the court took no steps 'to exclude from the grand jury any person or persons who entertained an attitude of bias, prejudice and hostility toward the defendants by reason of knowledge' of purported facts outlined by the defendant in his affidavit for by reason of belief or opinion gathered from the widespread circulation of publicity with respect thereto' and 'no steps were taken to instruct or direct the grand jury to ignore or disregard the reports circulated . . . or to disregard any attitude or opinion which they might have formed as a result thereof.' (St. 2140)."

In my opinion, we should view the circumstances of this case realistically and in a reasonable manner. As I read the record, a consideration of the facts of this case thus viewed can only lead to the conclusion that some, if not all, of the grand jurors had already formed certain unfavorable opinions regarding appellant's alleged conduct.

To do otherwise, would seem to be contrary to all human experience. Yet, at no time were any of the prospective [fol. 2617] jurous asked if they had formed an opinion, and, if so, whether such fact would prevent them from participating fairly in an impartial investigation of the mat-

ters later referred to in the court's charge.

Furthermore, no instruction was ever given them as to the legal significance to be attributed to the newspaper statements that appellant had invoked the Fifth Amendment privilege some two hundred fifty times in declining to answer questions before the Senate Committee. Yet, auch fact was the subject of much comment in the various news media. As stated in *Grunewald* v. *United States*, 353 U. S. 391, 1 L. Ed. (2d) 931, 77 S. Ct. 963, where the court, in discussing the right to invoke this constitutional privilege, quoted from Griswold, The Fifth Amendment Today:

"Too many, even those who should be better advised, view this privilege as a shelter for wrongdoers. They too readily assume that those who invoke it are either guilty of crime or commit perjury in claiming the privilege."

The failure of the court to interrogate the jurors for the existence of possible bias and prejudice against the officers of the teamsters' union constituted prejudicial error.

The effect of this error was further magnified by the court's charge to the grand jury. The jurors were not instructed to base their deliberations solely upon the evidence presented to them during the course of their investigation. On the contrary, the court's charge seemed to indicate that the so-called disclosures of the Senate Committee were worthy of their consideration. Instead of instructing the jurors that they must wholly disregard the

"testimony" before the Senate Committee, the court expressly brought it to their attention, and then stated the substance of the committee's conclusions as to appellant's conduct. Indeed, the language used implied that the court felt that the grand jurors must already be aware of these matters because of the widespread publicity accorded the [fol. 2618] Senate hearings.

The court stated that the president of the teamsters's union had publicly stated that the sums received by him from the union were a loan, and that it was the function of the grand jury to investigate this matter and determine the truth in that regard. As stated in Fuller v. State, 85

Miss. 199, 37 So. 749:

".f. every man, whether accused or not, is entitled to the presumption of innocence until legally convicted. This presumption is binding upon the petit jury, and stands as a witness in favor of the defendant when on trial. It guards him before the grand jury until their investigations have produced proof believed by them which overthrows it. It protects him from the circuit judge in his charge to the grand jury, and forbids that any word from that high station, so apt, on account of its dignity and importance, to influence by its slightest utterance, should prejudice the grand jury when it enters upon the consideration of violations of the law." (Italies mine.)

The last assignment which it is necessary to notice is No. 28, which relates to the alleged misconduct of the prosecuting officers before the grand jury during the examination of the witness, Fred Verschueren, Jr., who was book-keeper for the Joint Council of Teamsters No. 28.

The testimony of this witness before the grand jury covers one hundred eight six pages of the record and is too long to paraphrase in this opinion. Suffice it to say that he was subpoensed and first testified on June 20, 1957, regarding the handling of certain funds. He was excused after completing his testimony on that day.

On July 10, 1957, he voluntarily appeared and asked to correct some errors in his testimony. He said he did so at the suggestion of his own counsel. In his testimony on this occasion he told about having in his custody two en-

velopes containing currency which he was holding for appellant. He was excused temporarily to go back to his office and bring these envelopes to the grand jury room. He did so, and the contents of each envelope was counted [fol. 2619] There was \$3,100 in one envelope and \$3,500 in the other. Included in one envelope were two \$500 bills.

Mr. Verschueren's recollection was rather vague on some details, and his explanations regarding the change in his testimony since his June 20th appearance irked the three prosecuting officers who took turns cross-examining him.

Each of them threatened the witness in various ways:

(1) With prosecution for perjury four times (penalty fifteen years in the penitentiary—"there is no reason for you to go to the penitentiary for somebody else"); (2) invited him to take a lie detector test; (3) threatened to send the envelopes to the Federal Bureau of Investigation to find out if the witness were lying about having sealed and unsealed them. Another instance of badgering this witness was when one of the prosecuting officers said to the witness that he (the interrogator) knew that one could not get a \$500 bill from a teller's window at a bank except by special request, and that "we are going to assume . . . that is correct." At another point, a prosecutor stated to the witness: ". . . nobody in the room [being the grand jury and four prosecuting officers] believes one word you say."

The affidavit of appellant's counsel states on information and belief that there was such loud talking in the grand

jury room that it was audible in the hall outside.

The State Grand Jury Handbook, prepared under the auspices of the Section of Judicial Administration of the American Bar Association (1949), states as follows regarding the interrogation of witnesses before grand juries by prosecuting officers or jurors:

"All questioning should be impartial and objective, without indicating any viewpoint on the part of the questioner."

The questioning of the witness Verschueren in this case could hardly be described as objective. Neither was [fol. 2620] the viewpoint of the interrogator concealed when he attempted to "testify" as to the only possible way to get a \$500 bill at a bank and further stated, in effect,

that no member of the grand jury believed a word the witness said.

In order that there may be no assertion that the above described comments on the conduct of the prosecuting officers are not accurate, the pertinent portions of Mr. Verschueren's examination are set forth in Appendix A below.

The functions of a prosecuting officer with respect to the grand jury are limited to the giving of legal advice (upon request) and the examination of witnesses. Our statute and the decisions from other jurisdictions indicate the scope of these functions and are discussed below.

BCW 10.28.070 provides:

"The prosecuting attorney shall attend on the grand jury for the purpose of examining witnesses and giving them such advice as they may ask."

I do not think that the phrase "examining of witnesses" includes threats, arguments, and comments upon the evidence such as were made in this case. In *United States* v. Wells, 163 Fed. 13, the court, in speaking about the duties of the prosecutor with respect to the grand jury, stated:

may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by them, was meant to confine him to those traditional duties of giving advice concerning procedure and the like, to the examination of witnesses, as expressly provided, and not to the expression of opinions or the making of arguments. . . ."

Nor is it proper for the prosecutor to state facts which have no relevancy to the guilt or innocence of the person under inquiry (Attorney General v. Pelletier, 240 Mass. 264, 134 N. E. 407 (1922)); or to pass on the credibility of witnesses (People v. Benin, 61 N.Y.S. (2d) 692, 186 Misc. [fo 2621] 548 (1946); or in any way influence or direct the rand jury in its findings. Williams v. State, 188 Ind. 283, 23 N. E. 209 (1919).

The responsibility of the prosecutor in the trial of a criminal matter is discussed in State v. Case, 49 Wm. (2d)

66, 298 P. (2d) 500 (1956), where we quoted from *People* v. *Fielding*, 158 N. Y. 542, 547, 53 N. E. 497 (1899) these words:

"Language which might be permitted to counsel in summing up a civil action cannot with propriety be used by a public prosecutor, who is a quasi-judicial officer, representing the People of the state, and presumed to act impartially in the interest only of justice. If he lays aside the impartiality that should characterize his official action to become a heated partisan, and by vituperation of the prisoner and appeals to prejudice seeks to procure a conviction at all hazards, he ceases to properly represent the public interest, which demands no victim, and asks no conviction through the aid of passion, sympathy or resentment."

See, also, State v. Reeder, 46 Wm. (2d) 888, 285 P. (2d)

884 (1955), and cases cited therein.

Thus, if it is the duty of the prosecutor to conduct himself as a quasi-judicial officer in a contested criminal trial in the presence of a judge, how much more essential it is that he do so in a secret and uncontested grand jury proceeding before seventeen laymen without the presence of a judge.

The conduct of the prosecuting officers in this case can hardly be characterized as quasi-judicial. Rather it is best described in the following quotation from United States v. Wells, supra, which involved a grand jury proceeding:

"... a commendable zeal, which gathered force as it progressed, finally expanded into an exaggerated partisanship wholly inconsistent with the mijudicial duties of a public prosecutor, and entirely unnecessary in the execution of the powers reposed, ..."

The only case I have found which even remotely resembles the one at bar, in so far as it pertains to misconduct [fol. 2622] of prosecuting officers before the grand jury, is Commonwealth v. Bane, 39 Pa. Dist. & Cy. Rep. 664. There the defendants themselves were the witnesses before the grand jury, and the court quashed the indictment because.

the investigation was conducted by the Commonwealth's counsel in a prejudicial manner, in that the testimony of the defendants was openly derided and they were denounced as hypocrites and liars and were exhorted to repentance and confession in a highly emotional and dramatic manner, the court stating:

"While it is the duty of the Commonwealth's counsel, as well as his privilege, to attend upon the grand jury with matters upon which they are to pass, to aid in the examination of witnesses, and to give such general instructions as they may require, any attempt on his part to influence their action or to give effect to the evidence adduced is grossly improper and impertinent:..."

The difference between the misconduct in the Bane case, supra, and that before us here is one of degree only. The witness Fred Verschueren, Jr., on his second appearance before the grand jury, was giving testimony favorable to appellant. His credibility was for the grand jury to pass upon without any comment from the prosecuting officers. It could well be that his testimony was disbelieved by the grand jury solely as a result of the conduct of the prosecuting officers as shown in Appendix A.

Whether such conduct, in and of itself, would be sufficient to invalidate the indictment or not, it is not necessary to determine. However, it could only serve to further prejudice the grand jury, and, when taken in conjunction with the other errors previously discussed, deprived appellant of the right to an unprejudiced and impartial grand

jury as contemplated by the law of this state.

The errors on the part of the court in impaneling and charging the grand jury were no doubt due, in large part, to the infrequent occasions when grand juries have been called in this state. The court itself commented on this fact [fol. 2623] in its charge to the grand jury when it said that most people, even lawyers, are generally unfamiliar with grand jury procedure. However, the fact remains that

During the forty years preceding the calling of this grand jury, there had been only seven grand jury sessions in King county.

appellant, be he guilty or innocent, was entitled to a fair and impartial investigation of his conduct in accordance with the forms of the law before a valid indictment could be found against him. I am of the opinion that this right was denied him. As the supreme court of the United States said, in *United States* v. *Hoffman*, 341 U. S. 479, 95 L. Ld. 1115, 71 S. Ct. 814:

"The signal increase in such litigation emphasizes the continuing necessity that prosecutors and courts alike be 'alert to repress' any abuses of the investigatory power invoked, bearing in mind that while grand juries 'may proceed, either upon their own knowledge or upon the examination of witnesses, to inquire . . . whether a crime cognizable by the court has been committed,' Hale v. Henkel, 201 U. S. 43, 65 (1906), yet 'the most valuable function of the grand jury ... [has been] not only to examine into the commission of crimes, but to stand between the prosecutor and the accused,' id. at 59. Enforcement officials taking the initiative in grand-jury proceedings and courts charged with their superintendence should be sensitive to the considerations making for wise exercise of such investigatory power, not only where constitutional issues may be involved but also where the noncoercive assistance of other federal agencies may render it unnecessary to invoke the compulsive process of the grand jury."

Conclusion

My conclusion, based on the record herein and the decisions hereinabove referred to, is that two rules of law are applicable to the instant case:

1. That appellant is entitled to the presumption of innocence at all stages of this proceeding from the impaneling of the grand jury to the close of the trial before the petit jury. This right cannot be denied him because of any proceedings had before the Senate Committee.

[fol. 2624] 2. The selection of an unprejudiced and impartial grand jury to determine whether appellant should be indicted or not is just as much an essential part of the

law of this state as the selection of an unprejudiced and impartial petit jury impaneled to try him and render a verdict of guilty or not guilty of the offense charged in the indictment.

It is no answer here to argue that the state could have elected to proceed against appellant by information. The fact remains that the grand jury procedure was used. Thus, it was mandatory that the state comply with those statutes, which have been in effect in this state (and territory) since 1854, granting appellant the right to an impartial and unprejudiced grand jury.

This court, in State v. Devlin, 145 Wash. 44, 285 Pac. 826 (1927), defined a fair trial. That definition applies mutatis mutandis to a grand jury investigation. In the cited case,

we said:

"The question involved is that of a fair and impartial trial. In State v. Pryor, 67 Wash. 216, 121 Pac. 56, this court said:

"'A fair trial consists not alone in an observation of the naked forms of law, but in a recognition and

a just application of its principles.'

"It is the law of the land, a right vouchsafed by the direct written law of the people of the state. It partakes of the character of fair play which pervades all the activities of the American people, whether in their sports, business, society, religion or the law. In the maintenance of government to the extent it is committed to the courts and lawyers in the administration of the criminal law, it is just as essential that one accused of crime shall have a fair trial as it is that he be tried at all, whether he be guilty or not, has his picture in the rogue's gallery or not. In the Pryor case just referred to, it was said that it must be remembered, as stated in Hurd v. People, 25 Mich. 404, 'that unfair means may happen to result in doing justice to the prisoner in the particular case, yet, justice so attained is unjust and dangerous to the whole community."

Despite the public indignation created by the widespread publicity resulting from the senate hearings, appellant

was entitled to the same unprejudiced and impartial grand jury investigation as the law of this state guarantees to every citizen whether he be prominent or obscure. For one [fol. 2625] hundred five years, it has been the duty of our courts, as prescribed by both the territorial and state legislatures, to see that a state of mind does not exist in any prospective grand juror which would render him unable to act impartially and without prejudice. In my opinion, this statutory duty was not performed in this case, and hence the grand jury was not impaneled as prescribed by law.

Before concluding this dissent, I wish to briefly notice certain statements contained in the majority opinion. The majority takes the position that the only statutory provision that grand jurors in this state are required to be impartial and unprejudiced is found in RCW 10.28.010 and RCW 10.28.030, and that these provisions apply only to persons already in custody or held to answer for an offense. The

majority opinion then states:

"There was a reason for such a challenge by a 'person in custody or held to answer for an offense,' but the appellant was not such a person." (Italics mine.)

It seems to me that the only reason the legislature granted to a person in custody or held to answer for an offense the right to be investigated by an impartial and unprejudiced grand jury, is that the grand jury's attention had been focused upon him from the commencement of its investigation. That is precisely the situation of appellant here. There could not be any doubt in the minds of the prospective jurors that this grand jury had been convened to investigate appellant. As mentioned above, not only did the newspapers announce, less than three weeks before the impanelment, that appellant was to be investigated by the grand jury, but, also, the trial court, in its charge, instructed the grand jury that the president of the teamsters' union had publicly stated that the sums received by him from the union (which the Senate Committee stated were stolen) were [fol. 2626] loans which had been repaid, and that this issue presented a question of fact for the grand jury to resolve. I do not understand how it can be said, under the facts shown in this record, that the reason entitling a person

in custody or held to answer for an offense to be investigated by an impartial and unprejudiced grand jury, does not apply equally well to appellant. It is axiomatic that all men are equal before the law and are entitled to the same rights under the same or similar circumstances.

The majority opinion continues with the following state-

nent:

"When a modern grand jury starts its investigative process it seems ridiculous to suggest that as each new personality comes under scrutiny the proceedings must stop until it can be determined whether any member of the grand jury is biased or prejudiced against him; and, if a grand juror is so biased and prejudiced, the investigation is at an end."

Our duty is to apply the law to the facts of this case, and the above-quoted statement has no application to appellant. He was not some new personality who had come under the scrutiny of the grand jury during the course of its investigation. Rather, the court made it clear, in its charge, that the primary purpose of convening this grand jury was to investigate his activities as an officer of the teamsters' union. Appellant was a person whose conduct the trial court, in its charge, specifically directed the grand jury to investigate.

The majority further states that there is no showing here of bias or prejudice. My answer is that if, in the face of all the publicity regarding the Senate Committee hearings described above, anyone realistically could believe that there was no showing of bias and prejudice against appellant at the time of the impanelment of the grand jury, then it is impossible ever for anyone to make such a showing.

[fol. 2627] But, appellant's complaint is that the grand jurors were never interrogated by the trial court to determine if any bias or prejudice existed. In the absence of such interrogation, appellant necessarily must rely on the facts stated as indicating what such an interrogation would have disclosed as to bias or prejudice. Under the evidence here, it would be wholly unrealistic to presume that the grand jury was unbiased and unprejudiced.

The majority concludes its discussion of the grand jury proceedings with the statement that even if there were sufficient irregularities in the present case to warrant quashing the indictment, appellant could not be prejudiced, since there is no constitutional or statutory right to a grand jury in this state.

Whether or not there is a constitutional or statutory right to a grand jury in this state is, in my opinion, totally immaterial. What is controlling here is the fact that the state elected to proceed against appellant by indictment rather than by information. Therefore, having so elected, the state was bound to comply with the statutes relating to

grand jury procedure.

The majority opinion relies chiefly on decisions rendered by Federal courts whose grand juries need not be composed of impartial and unprejudiced jurors, because no statute or rule of court prescribes that qualification. Whether the Federal system or that ordained by the legislature of this state is preferable, is not for this court to declare. Any and all branches of government must comply with applicable constitutional and statutory requirements in the performance of their functions. This includes the grand jury. Until the legislature amends or repeals the statutory law, quoted and emphasized above, it must be applied with equal effect to every person whose conduct is under investigation by a grand jury pursuant to the court's charge to it.

[fol. 2628] For the reasons stated herein, it is my opinion that the order of the superior court denying appellant's motion to set aside and dismiss the indictment should be reversed and the cause remanded with directions to grant

the motion.

Donworth, J.

I concur

Finley, J. Rosellini, J. Hunter, J. [fol. 2629]

APPENDIX A (to dissenting opinion)

Excerpts from examination of Fred Verschueren, Jr., by presecuting officers before the grand jury July 10, 1957. (All italicized portions are those referred to in the attached opinion.)

"Q. Mr. Verschueren, I want to warn you at this time that you are under oath and that what you say here, if found to be false, can be perjury and you could be guilty of perjury for testifying falsely under oath. A. Yes sir.

Q. You are under oath. A. Yes sir.

Q. And the penalty for perjury is fifteen years in the penitentiary, it is a felony. A. Yes sir.

Q. Now. I want to give you every opportunity to state the

truth. . . .

Q. You know that. Do you want to tell us when he [appellant] signed this? You still say he signed this in October of '54 when he gave it to you? Do you want to change your testimony or not? A. I don't care to change my testimony. He must have signed it.

Q. We want to know the truth. A. I am telling you the

truth, Mr.

Q. All right. Mr. asked you about these envelopes. He told you about the penalty for perjury. You are the person that is on the stand, you are the person under oath down here, do you understand that? A. Yes sir.

Q. We are concerned with one thing and one thing only,

the truth. A. Yes sir.

Q. Now, Mr. Beck gave you this envelope in October, 1954, is that your testimony? A. Either that one or the other one, sir.

Q. This is Mr. Beck's handwriting, is it not? A. Yes.

- Q. He handed you this envelope with his handwriting on it at one time and one time only, isn't that true? A. Yes, but it is not necessarily the one he handed me in October of '54.
- Q. I thought you testified to Mr. it was the first envelope that had Western Conference on it, the other envelope, other material he gave you at a different time. You

testified the first envelope he gave you had Western Conference and Joint Council on it. A. I believe so.

Q. That is the one he gave you October of '54, isn't that

correct? A. Well, you are confusing me now.

Q. I am not trying to confuse you, sir. I want you to tell

the truth. A. I am telling the truth.

Q. There is no reason for you to go to the penitentiary for somebody else. A. I am not even thinking about that, sir.

Q. Well, I am thinking about that, sir. A. I am telling

you the truth so far as I know it.

Q. Let us know the truth, if you will. This is the envelope you got in October of '54 (indicating). A. I believe that is the one, yes sir.

Q. That is your testimony. A. To the best of my recol-

lection, yes sir....

Q. Why would he send a check down to you when he had several thousand dollars in cash? He testified as much as \$10,000 in his safe at his own home. Why would he send a check down to you to cash. Maybe you can answer that. A. I couldn't say, sir.

Q. Do you want to hazard an answer? It isn't because you are lying, is it? A. No sir. I have cashed, many, many

checks for Mr. Beck.

Q. Mr. Beck would send his personal checks down to you to cash? Mr. Beck sat on that stand and testified he didn't write two checks a year. A. I said checks made out to him and he would send them down, endorse them.

Q. Isn't there a bank right next door to your place of

business? A. Yes.

Q. But he would send them to you to cash out of some fund in the vault? A. He wouldn't necessarily know I was cashing them out of that fund. Actually I could have cashed them out of the office generally, but there were some circumstances where I couldn'ts

Q. Mr. Beck testified this morning all his checks were channeled through the B & B Investment Company. That is his testimony this morning, that he never bothered with financial matters, his wife took care of the home and all her expenses and everything else went through the B & B

and he wrote maybe two checks a year, he wouldn't even [fol. 2630] say that many. Is your testimony consistent with that, Mr. Verschueren. A. No.

Q. It isn't very consistent, is it? A. I am only telling

you what is the truth.

Q. You are telling the truth? A. Yes.

Q. Are you saying Mr. Beck lied to us this morning? A.

Nesir, I wouldn't say so.

Q. One of you must be mistaken then, is that correct? When did you talk to Mr. Beck last about your testimony here on the stand? A. I have never talked to him about my testimony on the stand.

Q. Have you talked to him about this money in the vault

in the last few days? A. No sir.

Q. You came in here cold and didn't know what you were going to testify about, is that it? A. I had a fair idea.

Q. You haven't talked to Mr. Beck, Sr., in the past several days or several weeks? A. I have talked with him, but not about the money, no sir.

Q. You didn't talk about these envelopes in the safe!

A. No sir, only that one time.

Q. It dovetails pretty well with his testimony, doesn't

it, fortunately? A. I don't know, sir. . . .

Q. These checks you cashed for Dave Beck, Sr. How much were they? A. Oh, varying amounts. Not any of them very high.

Q. How much? A. Mr. I can't remember all

those checks.

Q. You are going to be here a long time remembering. You are just starting. When I get through with you Mr. is going to take over again. We don't think you are telling the truth so we are going to stay with you for a while. How much did you cash checks for Dave Beck, Sr. for?...

Q. Do you deal in \$500 bills? A. No sir, I don't per-

sonally.

Q. I have never seen one before. This is amazing. Somebody gives you a \$500 bill and you have no recollection of it. You sit there and tell me somebody would give you a \$500 bill and you wouldn't remember who gave it to you. Is that your testimony? A. If they gave it to me personally?

Q. If they came in—if it came into your possession by

reason of having cashed a check or something? A. Sir, the amounts are all I count, if I have the proper amount of money.

Q. I realize that. Let's not talk about that. Somebody

handed you a \$500 bill, didn't they? A. Yes.

Q. Who did, and under what circumstances. A. Well.

as I say, the odds are-

Q. Never mind the odds. We are talking about what the facts are. I am not interested in the odds. What are the facts? Who gave you the \$500 bill? A. It probably came from the bank, yes.

Q. Probably? A. It could have come over the counter.

Q. Did you go to the bank and get those two \$500 bills, or didn't you? Did you or didn't you? A. I don't definitely recall, sir, whether I did or not.

Q. You don't know whether you went to the bank and got a \$500 bill or somebody gave it to you. A. Whether it came

over the counter, no, I don't, sir.

Q. You expect these people [the grand jury] to believe you would come into possession of a \$500 bill—...

Q. You already said you probably went to the bank and

got it. A. With the checks I cashed.

Q. Why would you ask for a \$500 bill in the bank? A. I probably didn't ask for a \$500 bills, but they may have given me one.

Q. You accepted it? A. Yes.

Q. You couldn't cash a check with a \$500 bill, when you got it. A. No sir.

Q. Then— A. There was ample funds generally exclusive of this amount then I probably didn't think it would

make any difference if I had \$1,000.

Q. Not what you think now, then, what did you think then when they gave you the \$500 bill and who gave it to you and what went through your mind. Something went through your mind, mister. What went through your mind when you got the \$500 bill and who did you get it from. Tell this jury who you got it from? A. Well, I must have gotten it from the bank, sir, or else it came over the counter in the-

Q. Not what must have been done. What did you do!

4. I-

Q. I don't care about probabilities. How and when did [fol. 2631] you get it? A. I definitely do not remember, sir,

how I came into possession.

Q You want this jury to believe you can get a \$500 bill and don't know the circumstances under which you got it. I 51 years old and I haven't seen one of them yet. How old are you! A. 36.

Q How many of these \$500 bills have you seen in your

lifet A. (No response)

Q. Well, how many? A. I am trying to think, sir. O. It isn't very many, is it! A. Yes, considerable.

Q. I thought you testified a little while ago you had only seen a few of them. You just got through testifying under outh you had only seen a few of them. Which time are you telling the truth? A. Well, sir, you are getting me so confused-

Q. I am confused? A. No, but I am.

Q. I don't think the jury is confused. Why should you be confused, you are supposed to be sitting here telling the truth. A. Yes.

Q. The truth will never confuse you, never. Where did you get that \$500 bill, two of them. Where did you get then! Under what circumstances and from whom and how? A. They may have been originals-

Q I am not interested in may have been. How did you get them? Tell me when and where? A. I cannot tell you.

sir, definitely how I got them.

Q. Two \$500 bills and you can't tell how you got them, but you got both by your own testimony in the last three years! A. Yes sir.

Q But you don't know the circumstances? A. No I don't, no. These may be the original bills, sir, I don't know.

I don't know.

Q I thought you said you went to the bank and got those bille! A. Just a moment, you said how did I come into possession of them. They may have been in the envelope originally.

Q Are you willing to testify now you never got those bills, they are the originals? A. No, I can't say that, sir.

Q. Is there anything that you can say definitely as you

sit here this afternoon? Is there anything you can say definitely? A. Yes sir.

Q. It will be a pleasant relief when that happens. . . .

Q. Have you ever received a \$500 bill from the bank without making a request for it? They don't keep them in those tills, you know, at all. You can't get a \$500 bill from a teller because they don't keep them there. Did you know that, sir? Did you know that, first. Answer that question. A. They are there if they have come in that day.

Q. Did you know they don't keep \$500 bills at all behind those windows. They receive them and take them somewhere else. Did you know that? A. No sir, I did not.

Q. You know it now. A. No, I don't.

Q. I am telling you now. They don't keep them there. You can't get a \$500 bill without making a request for it, or a \$1,000 bill, the most you can get is a \$100 bill. Did you know that? From a teller's window? A. No, I did not know that.

Q. We are going to assume, just for the sake of this discussion then, that is correct because I know it to be correct. That is what I have been told by people who know. A. Yes sir.

Q. Now, we can get the banker in here and get the same banker you've got out there and I assume he is not an officer of the Western Conference of Teamsters or not a member of your union, is he, the banker out there where you bank? A. Pardon.

Q. The bank you go to-what bank do you go to! A.

Sixth & Denny Branch.

Q. Mr. Beck doesn't own that bank, does he? A. Not to my knowledge.

Q. Well, assume the banker will some in and tell the

truth, can we assume that? A. Yes sir.

Q. He will tell us they don't keep \$500 bills in those windows. They don't give them to Fred Verschueren, Jr. when he brings in checks, they don't give them to anyone under any circumstances unless they ask for them because when you present checks and you want cash the teller always says, 'How do you want it, sir?' Don't they! They always say that to you every time, don't they! A. They sometimes say, 'Sir, do you care how you have it?'

Q. Not on the payroll, so you wouldn't get \$500, you [fol 2632] wouldn't make that special request at the bank, so how would that \$500 that came over the counter ever get into the envelope? Under what theory could that pensibly get in the envelope? That wasn't your practice. You see, you told us your practice this afternoon, because you realised we wanted to see the envelopes, that you never went to them, you never took anything out and then you went to the union hall and came back and your memory was refreshed in the fresh air and you told us you cashed checks and paid payrolls at times with this money, but each time you would put a I.O.U. in there and then you would adjust it later. Go to the bank and get the money and put it back in here. Mr. asked you about the \$500 bill and you said you could have gotten it from the bank. We are assuming now, because I know and I think you are pretty well in agreement, that you can't get \$500 bills unless you ask for them at the bank, that you couldn't have got it at the bank, so the only possible way you could have received that \$500 bill is that it is part of the original money that was put in there because you couldn't have got it over the counter, because that isn't your procedure. Nothing you got over the counter could have gone in that envelope. If it could, tell us how. A. Well, I did go through that originally. As I said, I would take monies from the box and-...

Q. Mr. Verschueren, with reference to this envelope, Exhibit 77, this is the original envelope given to you by Dave Beck in October or November of 1954. This envelope was sealed when you first got it, this is Exhibit 77? A.

Yes sir. .

Q. And you didn't open it again until the early part of

1955. A. Sometime in 1955.

Q. Around six months went by before you had occasion to go into it. When you went into it you saw this piece of paper in there. You saw this piece of paper, Exhibit 79 when you opened it with your finger and unsealed it?

A. Yes.

Q. Then you read the piece of paper. You did whatever you had to do with the money and you resealed it, is that

right? A. I am not certain that I resealed it right at that time.

Q. But it was resealed when the money was put back in You always kept these envelopes sealed? A. Not always.

Q. You resealed it at that time, after you put the money back, after the first transaction, the first part of '55! A. I won't definitely say I did, no.

Q. When did you reseal it after the first transaction. the first time you opened it? A. I couldn't tell you as to

dates, sir.

Q. Approximately when! A few months after! A. I

couldn't even approximate.

Q. A year or two years after. Did you leave it open or what? You told Mr. this afternoon that you resealed it right after you opened it. This time you say you didn't. Why do you hesitate? A. Well, because Iwhen you open an envelope innumerable times how do

you know which time you sealed it and didn't?

Q. You told Mr. you opened the envelope and resealed it. He questioned you at length about opening it with your finger and you would reseal it and then I think he went further and asked you whether or not you used any glue on it and you said no, and still when we have the envelope in this condition, it is stuck very well-and you are getting your two \$500 bills back now, don't miss that part on the record. Do I understand you told Mr. you resealed this envelope each time that you opened it? A. Well-

Q. Now, you didn't, is that right? A. No, I didn't every

time. Did I say I resealed it every time?

Q. I don't think you said every time, you said you resealed it the times you opened it and put the money back and resealed it and Mr. was very, very interested, he asked you what kind of glue did you use glue and you

said no you didn't. A. I didn't.

Q. This must be excellent glue on the Western Conference of Teamsters envelopes because the thing is perfectly sealed now. Understand we can send the envelope [fol. 2633] to the F.B.I. and determine from them whether or not it has been resealed numerous times, or innumerable times as you said. You were in there innumerable

times. You understand that, don't you! A. Yes.

Q. So if you decide all of a sudden here you are going to tell us the truth—and nobody in the room believes one word you say—you are telling us now that everything you have testified to here today is the truth? A. Yes sir.

Q. You have nothing to hide? A. No sir.

Q. And you are perfectly willing to undergo any sort of examination to determine if you are telling the truth, is that correct? A. Yes sir.

O. There is nothing at all that is going to stop you from

proving what you said? A. No sir.

Q. If I tell you now that I have arranged to give you a lie detector test, will you take it? A. I would have to

consult my attorney.

Q. Yes, that is what I thought, because you are not telling the truth, are you! If you were telling the truth you would have no qualms about taking a lie detector test because a lie detector will not work on a truthful person. It is an exceptionally fine machine, you can't fool it and you are absolutely a perfect subject because you are young and you have your wits about you and you would fail miserably unless you are telling the truth. Will you take the test! A. I have heard differently about the lie detector.

Q. Will you take the test? A. No, I will not.

Q. You will not. You don't have to consult your attorney do you? You don't want to take any test, do you? A. I will consult him first.

Q. But you won't take any test, will you? Will you,

now! A. I will consult him first.

Q. Yes, that is what I thought. . . . "

[fol. 2634]

No. 34636

HUNTER, J. (dissenting)—I dissent. In the instant case, it was not determined that the members of the grand jury were free from bias and prejudice. This is particularly significant in view of the atmosphere that existed toward the appellant in King county at the time the grand jury was impaneled.

One of the most basic concepts of a judicial proceeding is impartiality. This concept was announced as essential to a grand jury proceeding by both the legislature and the supreme court of this state, in the statutes and decisions cited in Judge Donworth's dissent. Under the rule adopted by the majority, a grand jury may be composed of members who are biased and prejudiced. This rule constitutes such grave error that its application will literally shake the foundation of the judicial system of this state.

The grand jury proceedings should be vacated and set

aside.

HUNTER, J.

No. 34636

In the Supreme Court

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In the Supreme Court of the State of Washington

STATE OF WASHINGTON,
Respondent,

VS.

DAVID D. BECK, also known as DAVE BECK,

Appellant.

No. 34636

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

HONORABLE GEORGE H. REVELLE, Judge

PETITION FOR BEARGUMENT, PETITION FOR HEARING AND BRIEF IN SUPPORT THEREOF

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In the Supreme Court of the State of Washington

STATE OF WASHINGTON,

Respondent,

VS.

DAVID D. BECK, also known as DAVE BECK,

Appellant.

No. 34636

APPEAL FROM THE SUPERIOR COURT

HONORABLE GEORGE H. REVELLE, Judge

FOR HEARING AND BRIEF
IN SUPPORT THEREOF

PETITION

Comes now the Appellant, through his attorneys and respectfully petitions this Court for a Reargument and for Rehearing on the grounds stated herein, reserving and reurging all grounds heretofore stated.

CHARLES S. BURDELL
R. V. WELTS
JOHN J. KEOUGH
Attorneys for Appellant

INTRODUCTION

Commencing in March of 1957 and continuing until this very moment, Dave Beck has been and is a man who desperately needs the protection of the judiciary—at this point the appellate level of the judiciary.

In May of 1957 Beck, the appellant herein, was the principal subject of investigation (or, more accurately, the target of attack) of a United States Senate Committee, the United States Internal Revenue Service, and a grand jury in King County, Washington. It is fair to state that at that time he was the most vilified man in the United States-and probably one of the most vilified men in the history of the United States. The hostility toward Beck was intensified by the mass media of news circulation, particularly television, and the willingness and apparent desire of the McClellan Committee to employ these media to suit their purposes; and the *

clamor of the public against a national figure found or claimed to have been engaged in some form of misconduct provided a ready market for the communication, by all news media, of the proceedings of the committee. The affirmative accomplishments of the committee were two-fold: (1) a somewhat minor amendment to the federal Labor-Management Relations Act, and (2) the retirement of Dave Beck as president of the International Brotherhood of Teamsters (and his replacement by James R. Hoffa). To achieve these goals, the committee found it expedient or desirable to repeatedly expose Beck to prolonged interrogation concerning matters which the committee knew that he would not and could not answer. The committee knew and welcomed the fact that it had a vast audience, and its attorney and members (some of them being attorneys themselves) knew or ought to have known that their audience, not being composed of

lawyers, would too readily assume that Beck was guilty of something merely because he found it necessary to assert his constituional right. See *Grunewald v. United States*, 353 U. S. 391, 421, 1 L. Ed. (2d) 931, 952, 77 S. Ct. 963.

The committee also knew that its proper function was good faith investigation and not deliberate exposure of claimed misconduct. See Watkins v. United States, 354 U. S. 178, 1 L. Ed. (2d) 1273, 77 S. Ct. 1173. Nevertheless, the committee, in the course of the intensified hearings, actually asserted that Beck's claim of privilege amounted to a declaration of guilt (Report of Hearings, Part 5, p. 1537, 1548). One of the statements (by Senator McCarthy) was as follows (p. 1537):

"You know that if you are innocent of any wrongdoing, then you could answer very simply 'yes' or 'no.' It is only if you are guilty of wrongdoing that you might incriminate yourself? You realize that, do you not?"

Subsequently, in these hearings and on the

basis of testimony and documents which would not have been admissible in court and which were not subject to cross-examination, committee members publicly asserted that Beck had committed various offenses. The committee members and their attorney were not content with making such assertions in the course of the committee proceedings. They wrote articles making such accusations and assertions in national magazines and in public speeches throughout the country. Even today, there is on the newsstands the March issue of the Reader's Digest containing an article by Robert Kennedy (the committee counsel and the brother of an avowed candidate for the presidency of the United States) in which Beck is accused, expressly and by implication, of various offenses and acts of misconduct. The article contains many, many inaccuracies.

In the course of these committee hearings neither Beck nor his friends or attorneys had

any forum by means of which to answer the charges made by the committee and by its members. And by the time Beck was brought to trial in the case at bar, it was the sincere and firm belief of his attorneys that public opinion against Beck had been inflamed to such a degree that he, standing alone, could not possibly overcome the prejudice and hostility which the hearings of the Mc-Clellan Committee had conceived and carefully nurtured. We do not hesitate to assert, with no disrespect to any judge or judges who may express disagreement, that this opinion was and is shared by an overwhelming percentage of the attorneys in the Seattle area as well as by the general public.

It has been said that in the review of procedural due process, appellate courts are frequently influenced by their view of the guilt or innocence of the defendant. Such conduct of course violates the integrity of the judiciary. (See Chessman v. Tests, 354 U. S. 156,

1 L. Ed. (2d) 1253, 77 S. Ct. 1172.) An appellate court which follows this procedure, would be of no assistance to a man in Beck's position. A determination of guilt before a fair and honest determination of serious challenges of due process is putting the cart before the horse. But aside from this, in the case at bar, purely from a factual standpoint, it must be apparent from the statement of facts that there is more to the case than meets the eye.

It has been said that even judges must guard against the possibility of subconscious prejudice, particularly when a decision must be made against a background of intense propaganda. An appellate court which is not alert to this danger would afford no protection to the rights of a man in Beck's position.

It has been said that some courts are courageous and that some are not. Only a courageous court, objectively devoted to the high-

est ideals of the judiciary, whatever the result in an individual case, can provide any protection to Dave Beck in view of the events of the past three years.

In making these points, we intend no disrespect, no discourtesy, and no implication that any members of this Court will not observe the obligations and tenets of the judiciary; but judges are only men, and the mental processes of men, if unguarded, are subject to motivations of which the individual is unaware. Every lawyer, if he is to serve the profession and his oath in the tradition of the Bar, must constantly be reminded of this fact. We assume that no judge and no court will be offended by a similar reminder, for it is only by the exercise of the highest mental discipline that any member of our profession, whether judge or lawyer, can properly determine the merits of a case as fraught with political and emotional implications as the present one.

UNDER THE CONSTITUTION AND STATUS OF THE STATE OF WASHINGTON REARGU-MENT MUST BE GRANTED.

A. The Applicable Constitutional and Statutory Provisions

Article I, §22 of the Washington State Constitution provides:

"In criminal prosecutions, the accused shall have . . . the right to appeal in all cases; . . ."

This right is re-affirmed in Amendment 10 of the Washington State Constitution.

Article IV §2 of the Washington State Constitution provides:

"The Supreme Court shall consist of five judges, a majority of whom shall be necessary to form a quorum and pronounce a decision . . In the determination of causes all decisions of the court shall be given in writing and the grounds of the decision shall be stated. The legislature may increase the number of judges of the Supreme Court from time to time and may provide for separate departments of said court." (Italics supplied).

R. C. W. 2.04.070 provides:

The supreme court, from and after February 26, 1900, shall consist of nine judges."

Rule 6 of Rules Peculiar to the Business of the Supreme Court provides:

"The court is divided into two departments, denominated respectively, Department One and Department Two....

"The presence of four judges shall be necessary to transact any business in either of the departments, except such as may be done at chambers, but one or more of the judges may from time to time adjourn to the same effect as if all were present, and a concurrence of four judges shall be necessary to pronounce a decision in each department."

(Italics supplies.)

R. C. W. 2.04.170 provides as follows:

"The chief justice, or any four judges, may convene the court on bane at any time, and the chief justice shall be the presiding judge of the court when so convened. The presence of five judges shall be necessary to transact my business, and a concurrence of five judges present at the argument shall be neces-

sary to pronounce a decision in the court en banc: Provided that if five of the judges so present do not concur in a decision, then reargument shall be ordered and all judges qualified to sit in the cause shall hear the argument, but to render a decision a concurrence of five judges shall be necessary; and every decision of the court en banc shall be final except in cases in which no previous decision has been rendered in one of the departments, and in such cases the decision of the court en banc shall become final thirty days after its filing, unless during such period a petition for rehearing be filed. The filing of such petition within such a period shall have the effect of suspending the decision until disposed of by the concurrence of five judges:" (Italic supplied.)

Rule 15 of the Rules Peculiar to the Business of the Supreme Court provides:

"The Chief Justice, or any four judges, may convene court en banc at any time, and the Chief Justice shall be the presiding judge of the court when so convened. The presence of five judges shall be necessary to transact any business, and a concurrence of five judges present at the argument shall be necessary to pronounce a decision of the court en

banc: Provided, that if five of the judges so present do not concur in a decision, then reargument shall be ordered and all the judges qualified to sit in the cause shall hear the argument, but to render a decision a concurrence of five judges shall be necessary; and every decision of the court whether rendered en banc or by a department shall be final thirty days after its filing, unless during such period a petition for rehearing be filed. The filing of such petition within such period shall have the effect of suspending the decision until disposed of by the concurrence of five judges:" (Italics supplied.)

Rule 16 of the Rules on Appeal of this Court provides as follows:

"Upon an appeal from a judgment or order, or from two or more orders with or without the judgment, the Supreme Court will affirm, reverse or modify any such judgment or order appealed from, as to any or all of the parties, and will direct the proper judgment or order to be entered, or direct a new trial or further proceedings to be had; and if the appeal is from a part of a judgment or order, will affirm, reverse or modify as to the part appealed from. The decision of the court shall be given in writing and in no

cause shall be deemed decided until the decision in writing is filed by the clerk ..." (Italics supplied.)

Rule 63 of the Rules on Appeal of this Court provides as follows:

"The Supreme court will hear and determine all causes removed thereto in the manner hereinbefore provided, upon the merits thereof, disregarding technicalities, and will upon the hearing consider as made all amendments which could have been made."

B. Present Status of the Case In the Supreme Court

This case was heard by eight judges of this Court, the ninth judge having disqualified himself. Judge Hill has filed an opinion, concurred in by three other judges, purporting to affirm the judgment of the trial court. In addition, Judge Donworth has filed an opinion, concurred in by three additional judges, in which it is stated that the order of the Superior Court which denied appellant's motion to dismiss the indictment

should be reversed and the cause remanded with directions to the Superior Court to grant such motion. Judge Hunter, who concurred in the opinion written by Judge Donworth, wrote a separate opinion in which he took the view that the grand jury proceedings should be vacated and set aside. Thus, the opinion of the eight judges participating in the case on appeal is equally divided on the issue of the validity of the indictment.

In addition to the aforesaid opinions, a per curiam statement has been filed in which it is recited that the eight judges "were equally divided in their decision . . ." and that there is "no majority for affirmance or reversal"

The per curiam statement expresses no

The general rule is that a per curiam decision is a decision in which the judges are in agreement and it does not require a complete or detailed statement of the reasons for the decision. See 21 CJS \$217, p. 400. There is a distinct difference between an "opinion," which is merely a statement of reasons, and a "decision," which is a judgment or conclusion and which constitutes the instrument through which a court acts. See State at rel. Lynch v. Petiljahn, 34 Wn. 24 427,442.

grounds for decision, as required by Article II §2 of the Washington State Constitution, nor does it constitute a determination of the cause upon the merits, as required by Rule 63 of the Rules on Appeal.

There is nothing to indicate that the four judges who were of the opinion that the indictment should be dismissed "decided", despite that opinion and in contradiction thereto, that the judgment in the trial court should be affirmed. Indeed, in view of the emphatic language contained in the opinion of Judge Donworth and that of Judge Hunter, it seems clear that the four judges who concurred in the views expressed in those opinions would hardly have concurred in any decision so directly in conflict therewith.

C. In the Present Status of the Case, Reargument Is Required By Statute and Rule

For the reasons stated above the per curiam statement does not constitute a decision under the Constitution and the laws of the State of Washington. It is, therefore, invalid and must be set aside, and reargument must be granted under the provision of RCW 2.04.-170. A judgment of a reviewing court is void unless the requisite number of judges concur. See 3 Am. Jur. §1159, p. 670.

There are, of course, cases in the State of Washington as well as cases in other jurisdictions in which the judgment of a trial court has been affirmed by an equally divided court. It has been said that a trial court judgment is affirmed "by operation of law" when the appellate court is equally divided. These decisions do not affect appellant's right to reargument as provided in RCW 2.04.170. In some of these cases neither the reported decision nor the file indicates whether the decision was rendered before or after reargument and in the cases where there was no reargument, it does not appear that the duty to order a reargument was brought to the attention of the court, either

by petition or otherwise. See, e.g., Edwards v. Carroll, 163 Wash. 704; Clise v. Carroll, 163 Wash. 704; State ex rel. Taxpayers v. Remann, 29 Wn. 2d 843.

On the other hand where the right to reargument has been brought to the attention of the court by petition, the court has granted reargument on the theory that it is required to do so under the provisions of RCW 2.04.170. Thus, in State ex rel. McAulay v. Reeves, 196 Wash. 1, the court, after reargument, stated at page 10:

"Upon the filing of the foregoing opinions, the respective parties to the cause jointly petitioned that the matter be set down for reargument. The petition was granted, as required by the provisions of Rem. Rev. Stat. §11 [P. C. § 8656], and a reargument was had on August 9th. As a result of the more mature consideration of the matter thus afforded, five members of the court (Judges Main and Blake dissenting) have reached the conclusion that State ex rel. Chealander v. Carroll, 57 Wash. 202, 106 Pac. 748, should be overruled. With that modifica-

tion, the first of the foregoing opinions is adopted as the opinion of the court."

Reargument, when the court is divided in opinion, has been ordered in certain cases even in the absence of a petition. See State v. Alfred, 145 Wash. 696 (No. 20563); Peterson v. Tacoma, 139 Wash. 313 (No. 19294); and in Serra v. National Bank of Commerce, 27 Wn. 2d 277, the court, on its own motion, ordered two rehearings en banc after a departmental hearing. After both of the en banc hearings, the opinions of the judges remained equally divided.

In any case in which there is a divided court, it is manifest that the litigants, and indeed the court, should be entitled to reargument. Frequently counsel for the litigants can be of assistance to the court with respect to questions or points which have been raised in opinions of the court. This added assistance may result in a change or modification of the opinion of one or more

of the judges. This occurred in State ex rel. McAuley v. Reeves, supra. Similarly, it is possible that where several questions are raised on appeal, and where the court has spent a considerable period of time and effort upon one of these points, a reargument upon one or more of the other points may be of assistance.

In short, a divided court demonstrates that there is a problem or problems of considerable difficulty before the court; and in a criminal case, an opportunity for reargument is little to ask when the alternative is imprisonment or the expense of an appeal to a higher court. And while it is true that the time and effort in considering a reargument may be a burden upon the court, there is always a degree of possibility that the reargument will result in a decision by the majority; and should this be the result, the effort which has been expanded by the litigants and by the court is a small price to pay for the reward

of added confidence in the judicial system which will ensue. We submit, therefore, that the court owes itself, as well as the litigants, an opportunity for reargument and resubmission of the case.

In any event, in this State, where reargument is requested, the Court is required by statute and by its own rule to grant the request. We have found no cases in which a petition for reargument under such circumstances has been denied.

IV

A JUDGMENT OF CONVICTION IN A CRIMI-NAL CASE IN THE STATE OF WASHINGTON CANNOT BE AFFIRMED BY A DIVIDED COURT

There are, of course, many decisions throughout the country, as well as several in the State of Washington, which hold that the judgment of a trial court is affirmed if the opinions of the appellate judges are equally divided. Some of these decisions are criminal cases, including the case of State v. Alfred,

145 Wash. 696. Needless to say, it offends the dignity of the judiciary system and public policy to imprison any person in a situation where the validity of the conviction is so strongly in doubt that the appellate court is unable to reach a majority decision.

At common law there was no right of appeal and in cases where the appellate court was divided, the appeal was frequently dismissed, as distinguished from the judgment being affirmed. All-Rite Contracting Co. v. Omey, 27 Wn. (2d) 898; Ellis v. Banyard, 104 L. T. 460 (1911); Metropolitan Water Board v. Johnson and Co., 107 L. T. 711 (1913); Bolan v. Allgood, 108 L. T. 461 (1913).

The dismissal of an appeal because the appellate court is equally divided, where there is no fundamental right of appeal, is a result which can be accepted with some logic. This is not true, however, where there is a constitutional or statutory right of appeal. The right of appeal most certainly must carry

with it the right to a decision in accordance with the applicable statutes and rules, for certainly the right of appeal without the right to a decision is no right at all. In such case any act by the appellate court, whether it be affirmance or reversal, must be based upon the statutory provisions relating to appeals. Otherwise the act of the appellate court would violate the constitutional guarantees of equal protection and due process.

An affirmance by an appellate court of a lower court judgment must be based either upon some statutory procedure or upon some rule of law consistent with the constitutional guarantees of equal protection. It cannot be based upon presumptions.

The practice of affirming a lower court judgment where the appallate court is divided probably flows from the fact that at common

law there was no right of appeal and, accordingly, appeals were dismissed in the event the appellate court was divided. The practical effect of a dismissal of an appeal in such a situation was to leave undisturbed the judgment of the lower court. This was regarded as an affirmance "by operation of law." 3 Am. Jur. Sec. 1160 p. 671. But where constitutions and statutes provide for rights and methods of appeal, a different situation exists. In such case, the appellate court cannot resort to the "operation of law" theory because the question immedidately arises: What law exists which requires or permits an affirmance where the appellate court is divided? And, in criminal cases, would it not be more consistent with the guarantees of the Constitution to require the appellate court, if it is equally divided, to reverse a judgment of conviction?

Thus, in those states where a right of appeal exists in a criminal case, that right must

be emercised in a manner consistent with the methods of appeal which are provided and in accordance with the guarantees of equal protection and due process of the Fourteenth Amendment to the Constitution of the United States. See Frank v. Magnum, 237 U. S. 309, 50 L. Ed. 900, 35 S. Ct. 582; Doud v. United States, 340 U. S. 306, 95 L. Ed. 215, 71 S. Ct. 262; Myle v. Wiley, 78 A. (2d) 769, (1951, Municipal Court of Appeals D. C.).

In many states there are statutory enactments which establish the procedure to be followed in the event the appellate court is equally divided. Most of these statutes provide that in such case, the judgment of the lower court shall be affirmed. A statute of this nature is constitutional because the right of appeal is not essential to due process and,

[&]quot; Historytican are: Vol. 1, p. 578, Colorado Stat. Ann.; \$54-6018, Georgia Cude; Burns Indiana Statutes Annotated, 5 5-2002; § 21.300, Hentucky Revised Statutes; § 601.36 Complete Laws of Michigan. In Connections, the statute provides that a majority of the appellate judges is necessary to severe a lower court judgment and if the appellate judges are equally divided, the cutue shall be determined by the vote of the chief judge one § 7008, G. S. of Conn. (1949).

accordingly, a state may enact statutes imposing limitations or conditions upon that right. See Lott v. Pittman, 343 U. S. 588, 61 L.Ed. 915, 37 S. Ct. 473. On the other hand, in states where there is a right of appeal by constitution, the statutes which implement such right must be followed; and failure of the statute to provide for a method in which the right of appeal can be fully and effectively exercised does not justify a denial of that right.

In the State of Washington, there is no provision for dismissing an appeal in the event the Supreme Court is divided, and to do so would impinge upon the constitutional right to appeal and the right of decision in accordance with statutory procedure. Nor is there in Washington any statute or rule which provides that in the event the appellate court is divided, the judgment of the lower court shall be affirmed. There is, in short, no statutory law which permits this Court in a crim-

inal case to affirm a conviction "by operation by law."

Likewise, this Court is not permitted to indulge in any presumption of law to the effect that the rulings of the trial court were correct. No statute permits this, and even if there were such a statute, it would doubtless be held unconstitutional on the ground that it violates the constitutional right of appeal.

This was demonstrated in the case of Eskridge v. Washington State Board, 357 U. S. 214, 2 L. Ed. (2d) 1269, 78 S. Ct. 1061. That case involved an application for habeas corpus filed in 1956, the petitioner having been convicted of murder and imprisoned in 1935. The petitioner alleged that error had occurred in the course of his trial and contended that the failure of the State to provide him with a free transcript of the trial proceedings violated the Fourteenth Amendment to the United States Constitution. A Washington statute (Rem. Rev. Stat. 42-5,

RCW 2.32.240) provided that if a defendant in a criminal case presented satisfactory proof of inability to pay for a transcript, "the judge presiding, if in his opinion justice will thereby be promoted, may order said transcript to be made . . ." at the expense of the county treasury. The trial court considered this statute and made a finding to the effect that justice would not be promoted by providing a free transcript because, "the defendant has been accorded a fair and impartial trial, and in the Court's opinion no grave or prejudicial errors occurred therein." This Court denied the petition without opinion, and the Supreme Court of the United States granted certiorari. The latter court reversed the decision of this Court on the ground that it violated the Fourteenth Amendment and the Supreme Court declared that the "conclusion of the trial judge that there was no reversible error in the trial cannot be an adequate substitute for the right to full appellate review available to all defendants in Washington who can afford the expense of a transcript." (357 U. S. 214, 216). We submit that if Washington cannot enact a statute which conditions the right of appeal by establishing a presumption of correctness on the part of the trial court, then such presumption certainly cannot exist in the absence of statute; and thus, as here, where the Supreme Court is divided, there exists no law by presumption which warrants an affirmance of conviction "by operation of law."

Moreover, in the case at bar the elleged errors (and particularly the questions relating to the empanelment and proceedings of the grand jury) involve pure questions of law. It may be true that there exists some presumption concerning the correctness of the findings of fact of a jury or trial court and that upon review of such findings, an appellant, even in a criminal case, may have the burden of persuading a majority of

the judges that the findings were incorrect. But we need not argue this point because there is no presumption of the correctness of the rulings of law of a trial court. Ellerbeck v. Haws, (Utah 1958), 265 P. (2d) 404; Kubby v. Hammond, (Arizona 1948), 198 P. (2d) 134; Sapp v. Barenfeld (Cal. 1949), 212 P. (2d) 233; Loucks v. Pierce (Ill. 1950). 93 N.E. (2d) 372. Indeed, where an appellate court is divided equally on a point of law, it is sheer nonsense to require an appellant in a criminal case to overcome a presumption that the trial court's ruling on points of law were correct. This is particularly true where, as here, the purported affirmance clearly overrules prior decisions of this State ex. rel. Murphy v. Superior Court, 82 Wash. 285, the relator moved to set aside an indictment on the ground that the grand jury was not empaneled as provided by law. 78 names had been drawn from the jury lists. Approximately 38 of these claimed exemption under the applicable statutes. From the remaining 40, the presiding judge selected 17 to serve as grand jurors. Some of these were found to be disqualified or were excused for other reasons and the judge thereupon selected a sufficient number of those remaining to constitute a grand jury composed of 17 persons. There remained approximately 18 veniremen, and these were excused without examination or the chance of being selected as grand jurors. This Court held that the indictment should be dismissed because (p. 286):

"That it was the policy of the legislature to preserve the right to have an unbiased and unprejudiced jury and grand jury, and that no suspicion should attach to the manner of its selection in all cases, cannot be questioned. An essential element in selecting jurors is the element of chance. The English speaking people have found no better way and have made it the supreme test of sufficiency. Selection by chance has been indorsed by this court, speaking in harmony with an unbroken current of authority."

The Court further declared that the fact

that no prejudice was demonstrated, and that a fair jury had in fact been selected, was immaterial and would not cure the error in the method of selection. Similarly, in State v. Guthrie, 185 Wash. 464, 475, this Court expressly stated that the policy of the law charges the court with the responsibility of insuring that qualified and impartial grand jurors are secured.

In purporting to affirm the judgment of the trial court in the case at bar, the opinion of Judge Hill (155 Wash. Dec. 570-571) declares that bias or prejudice on the part of one or more of the grand jurors is not a ground for setting aside an indictment, and the opinion further indicates (p. 571) that the burden is upon the defendant to make a showing of bias and prejudice. This opinion is in direct contradiction to the holding in State ex. rel. Murphy v. Superior Court, supra, and its overrules both the result and the language of that case. Surely, this cannot be

done by a divided court. There is no statute or legal principle in this State which permits a decision of this Court on a point of law to be overruled "by operation of law," or by presumption, or by a superior court, or in any manner other than by decision of the requisite number of judges of the Supreme Court.

Similarly, the case law of this State does not provide a constitutional basis for affirmance of a conviction by a divided court. In this State, the practice of affirming the judgment of the lower court is not inflexible and the course to be followed in such a situation is wholly within the discretion of the Supreme Court. Serra v. National Bank of Commerce, 27 Wn. (2d) 277. The practice is purely one of expediency and the action of the court depends upon such factors as whether there might be a change in the personnel of the court, or whether, for some reason, immediate disposition of the cause is necessary. See Serra v. National Bank of Commerce, su-

wn. (2d) 843. Where, in a criminal case, there is a constitutional right of appeal, we submit that that right is not satisfied by the affirmance of cases because of expediency or on the possibility of a change in the personnel of the court. Affirmance of a conviction based upon such factors most certainly denies to any appellant protection equal to that which is afforded to one whose conviction is affirmed by a majority decision, in accordance with the Constitution and statutes of the State.

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Moreover, Rule 63 of the Rules on Appeal requires that this Court make its determination of the issues which are presented to it "upon the merits." The purported decision of a divided court surely cannot constitute a determination of the cause upon the merits of either procedural or substantive law.

In order to affirm the conviction in this case, or in any criminal case, it would be

necessary, of course, to remand the cause to the superior court. But even this act constitutes a judicial "decision" because it is "the instrument through which the court acts." State ex. rel. Lynch v. Pettijohn, 34 Wn. (2d) 437, 442. Under our Constitution and statutes, such a decision must be made by a majority of the court. Any number of judges comprising less than a majority have no power to make or render such a decision.

We submit that the Constitution and statutes of the State of Washington do not permit affirmance of a conviction by an equally divided court and that any attempt on the part of this Court to utilize such a vehicle of affirmance constitutes a denial of the equal protection and due process clauses of the Fourteenth Amendment.

Under moral as well as legal principles a human being should stand free under his constitutional right of appeal and presumption of innocence until it can be stated affirmatively, by a method of decision provided by statute and with a statement of the reasons for such decision, that his conviction was legal. He should not be sentenced to imprisonment by indecision. Due process of law is an expanding concept, based upon the policy of a community with respect to judicial regularity and fairness. Where a community has determined that its citizens are entitled to appeal from a conviction in a criminal case, imprisonment by indecision destroys that right and violates the concept of equal protection and due process which are implicit in this right.

V

THE OPINION OF JUDGE HILL CONCERNING THE IMPANELMENT OF THE GRAND JURY, WHICH IS CONCURRED IN BY THREE OTHER JUDGES, IS ERRONEOUS UNDER THE LAW OF THE STATE OR WASHINGTON AND VIOLATES THE FOURTEENTH AMENDMENT.

In the opinion written by Judge Hill it is stated that the inference to be drawn from the argument of appellant is that adverse publicity renders a person immune from grand jury investigation (155 Wash, Dec. 568). If appellant's argument suggested this inference, the argument was inept. No such inference is intended and appellant's argument compels no such inference. Defendants in criminal cases, like other members of any community, must accept the fact that current techniques of communication may result in adverse publicity. On the other hand, this does not mean that publicity prevents prosecution. But courts would be blind, indeed, if they did not recognize the dangers inherent in the anturation type of publicity. Hostile and adverse publicity in any case demands that the courts be vigilant and alert to protect the rights of the accused; and in many cases (and particularly in the case at bur) hostile publicity may require special observance by the courts, at all stages of a criminal case, of the rights of the accused. To protect these rights,

adverse publicity may require special precautions in such matters as selection and impanelment of grand juries, conduct of the prosecution, the granting of reasonable continuances, and other appropriate safeguards. But this does not mean that prosecution cannot proceed, subject to the observance of such special precautions as may be appropriate.

In the opinion written by Judge Hill, it is flatly held that bias or prejudice on the part of one or more of the grand jurors is not a ground for dismissal of an indictment. This holding, if adopted by the Court, would be a definite and positive violation of the Fourteenth Amendment to the Constitution of the United States. The case of Cussell v. Texas, 339 U. S. 282, 94 L. Ed 839 settles this point once and for all. In that case the defendant was a negro and negroes had been excluded from the grand jury which indicted him. At the outset of its opinion, the

Supreme Court of the United States approached the problem as follows:

"Review was sought in this case to determine whether there had been a violation by Texas of petitioner's federal constitutional right to a fair and impartial grand jury." (Italics supplied).

The Court held that the right to a fair and impartial grand jury did exist, and that this right had been violated.

Justice Jackson, in a separate opinion, argued (as does Judge Hill in the case at bar) that an indictment was only an accusation and that any bias or prejudice in instituting the accusation would be cured by the various safeguards implicit in a fair trial. But the opinion of Justice Jackson was a dissent.

Similarly, in State v. Pierre (La. 1938) 180 So. 630, reversed in 306 U. S. 354, the United States Supreme Court rejected the argument that an indictment returned by a grand jury which might have been prejudiced could be cured by a fair trial.

The case of Hernandez v. Texas, 347 U. S. 475, 98 L. Ed. 866, 74 S. Ct. 667 is to the same effect. In that case the court declared (347 U. S. 478):

"But community prejudices are not static and from time to time other differences from the community norm may define other groups which need the same protection. Whether such a group exists within a community is a question of fact."

On the record in this case, and indeed on the basis of common knowledge, the fact that officers of the Teamsters Union constituted agroup which required the protection of the Fourteenth Amendment is a point which is not subject to dispute—and this is particularly true if the name of that officer was Beck. If this group did not need such protection before the impanelment of the grand jury, it surely needed it after the charge and instructions which the lower

court gave to the grand jury. Without fear of being accused of any prejudice toward race or color, we submit that Beck is entitled to no less protection under the Fourteenth Amendment than that afforded to a negro or to a Mexican.

The Fourteenth Amendment is not limited to protection of a minority race. In the *Hernandez* case, *supra*, the court declared (347 U. S. 475, 477):

"Although the court had little occasion to rule on the question directly, it had been recognized since Strauder v. West Virginia, 100 U. S. 303, 25 L. Ed. 664, that the exclusion of a class of persons from jury service on grounds other than race or color may also deprive a defendant who is a member of that class of the constitutional guarantee of equal protection of the laws."

In the opinion written by Judge Hill it is suggested that the appellant made no showing of bias or prejudice (155 Wash. Dec. 571). Do we understand that Judge Hill and the judges who concurred in that opinion intend

to dispute the fact that it was common knowledge that there existed a general and intense attitude of bias and prejudice against Beck throughout the Seattle area? We honestly do not believe that these judges intend to deny this fact. But in any event, the point is immaterial. Grand jurors, as in the case of trial jurors, cannot be held to impeach the validity and correctness of their findings if an indictment has been regularly returned. Commonwealth v. Smart (Pa. 1951) 84 A. (2d) 782. Moreover, where a constitutional right has been violated, prejudice need not be shown by the defendant. Thus, in Cassell v. Texas, supra, it was not necessary for the defendant to demonstrate that the persons who were selected as grand jurors were in fact biased or prejudiced against him. Nor was that burden imposed upon the defendant in Hernandez v. Texas, supra. All that the court held to be necessary was a showing that the defendant was a member of a group

toward which there was some degree of bias or discrimination. In Hernandes v. Texas there was merely a showing of a few circumstances which warranted the inference that there existed an attitude of discrimination toward Mexicans. In the case at bar, the circumstantial evidence in the record (aside from common knowledge) is overwhelmingly more powerful, both in quality and quantity, than was the evidence in the Hernandes case.

In view of the above decisions there can be no doubt that the opinion of Judge Hill on this point is contrary to the provisions of the Fourteenth Amendment.

As pointed out by Judge Donworth, the opinion of Judge Hill is also contrary to the statutes and decisions in the State of Washington. The fact that the laws of the State of Washington require an impartial grand jury has been recognized by the judges of two superior courts since the impanelment of

the grand jury in the case at bar. In August 1958 a grand jury was impaneled in the Superior Court of the State of Washington in and for the County of Grant, by Judge Cy McLean. Judge McLean was careful to interrogate each prospective juror with respect to the question of possible bias or prejudice. The voir dire examination of the prospective grand jurors was similar to that which is usually employed in the examination of petit jurors. Typical excerpts from this impanelment are as follows:

"Q—Would there be anything in your acquaintanceship with Mr. Schuster that would in any way tend to affect your decisions in this Grand Jury investigation?

A-I don't think so:

Q—In other words, you wouldn't have any hatred or malice or fear or favor or anything of that nature so far as your deliberating would be concerned in connection with this investigation?

A-No.

Q—Have you formed any opinion, Mr. Krueger, as to any of the matters that

have appeared in the paper or that you have heard concerning this Grand Jury investigation?

A-To some extent, I have, yes.

Q Do you feel that your opinion would be such that it would stay with you regardless of what evidence was elicited by the Grand Jury?

A-I would try not to let it interfere.

I would say that it wouldn't.

Q—Seeking the matter as a whole, you of course read and heard things about. this pending Grand Jury investigation? A-Yes

Q-Do you feel that you would be able to render any final decision as a Grand Jury member unaffected by your previous knowledge or thoughts that you might have concerning this matter?

A-I'm sure that I will not be influenced unless substantial evidence would

be presented that I could accept.

Q And your decision in this matter would depend on what evidence the Grand Jury had before it?

A-That's right.

Q—And I believe you stated there was nothing in your association that would bother you sitting on this Grand Jury? A-Yes.

Q—You believe you could be fair and impartial to decide whatever your findings are upon the testimony that is presented, is that correct?

A-That's right, I certainly would.

Q-Mr. Hardt, you have no doubt read and heard things of this Grand Jury investigation?

A-I have, yes.

Q—As a result of what you have read or heard have you formed an opinion that would stick with you regardless of what is put before the Grand Jury?

A-No, not that I know of.

Q—In other words, there is nothing to prevent your bringing a decision strictly on the evidence that is brought before the Grand Jury?

A—I think so, yes.

Q—Do you know any reason why you couldn't be a fair Grand Juror?

A—No."

The same procedure was followed in the impanelment of the grand jury in Snohomish County, Washington, in December 1959. The grand jury in that case was impaneled for the purpose of investigating the method of law enforcement in the county. Judge Den-

ney interrogated each prospective juror to determine whether the juror was acquainted with any law enforcement officials or any attorneys and questioned each juror with respect to his knowledge of law enforcement practices and procedures and other related subjects; and in interrogating each juror, Judge Denney asked questions such as the following:

"Q—From what you have heard, and I don't believe you live in a vacuum any more than the rest of us, is there anything you have read or that has been suggested by the court in these proceedings that would suggest to you why you couldn't be fair, impartial and objective in making an examination into law enforcement in this county?

A-No, sir."

The opinion of Judge Hill is not only contrary to the Fourteenth Amendment and other law and current practice in the State of Washington; but it is also contrary to the popular conception of the function of grand jurors. For several months Columbia Broad-

casting System has produced and televised a program entitled "Grand Jury." At the commencement of each program the announcer describes the grand jury as being an institution which is the bulwark of liberty and which protects the inalienable rights of free people and which serves without prejudice to maintain the laws of the land. (Note: The writers of this brief have in their possession a certified copy of the impanelment of the grand jury by Judge McLean, and an uncertified copy of the impanelment of the grand jury of Judge Denney. We also have in our possession a copy of the description of the function of grand jurors, as included in the aforesaid television program, which was received from Desilu Productions, Inc., of Los Angeles. We do not know the number of stations in the country which reproduce this program, but Mr. Burdell saw it, and heard the aforesaid description, in New York City

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on February 16, 1960. Affidavits concerning these subjects will be filed).

In the opinion of Judge Hill considerable reliance is placed upon a number of decisions of federal district courts. It is doubtful whether these decisions represent the practice generally followed by federal courts throughout the country. In any event, these decisions, if followed, would not be approved by the Supreme Court of the United States, as is declared by the decisions referred to above.

In the opinion written by Judge Hill it is argued that a grand jury need not be impartial because under the law of this State accusations may also be made by Information. We submit that the contention that an accusation made in an illegal manner is proper merely because the same accusation might have been made in a legal manner must not be followed. The consequences of this novel theory are troublesome, to say the least. Does

this mean that a prosecutor can use the subpoena power of an illegally constituted grand jury to obtain evidence upon which to base an Information? Supposing a prosecutor believes that there is not just cause upon which to base an accusation: Does this mean that the court can impanel a biased and prejudiced grand jury which will accuse regardless of just cause? Suppose an indictment were to be dismissed because of bias and prejudice of a grand jury, and suppose the statute of limitations had expired during the interim between the return and dismissal of the indictment: Could the prosecutor return an Information despite the expiration of the statute of limitations simply on the ground that he had the power to file an Information at the time the indictment was returned? And to reverse the situation, would any court refuse to dismiss an Information filed by a biased and prejudiced prosecutor simply because the same accusation might properly

have been made by a grand jury? These questions answer themselves and illustrate the problems which would be involved if we were to regard the power and function of a prosecutor and grand jury as co-extensive. The point is that a prosecutor will not necessarily file an Information on the same evidence upon which a grand jury might base an indictment, nor will a grand jury necessarily return an indictment based on the same evidence upon which a prosecutor might file an Information. The prosecutor is a quasi-judicial officer and must be free from bias and prejudice. Similarly, the grand jury is an arm of the court and must observe the same impartiality as the court itself.

In federal courts, an accusation for a misdemeanor may be made by filing an Information or by the return of an indictment. In the case of *Evaporated Milk Association*, Inc. v. Roche (9th Cir. 1942) 130 F. (2d) 843, (reversed on procedural grounds in 319 U. S. 21, 87 L. Ed. 1185) the validity of an indictment was challenged on the ground that the grand jury which returned it had been improperly continued from one term of court to the next term. The case was argued extensively and considered carefully by the Ninth Circuit sitting en banc. In the course of the thorough argument and decision it did not occur to anyone that the court could have used Judge Hill's contention and disposed of the matter simply by stating that the validity of the grand jury was immaterial because the district attorney could have returned an Information.

Judge Donworth summarizes all of these points briefly and logically by pointing out that when any procedure is used for the purpose of making an accusation, the procedure must be properly created and carried out.

In considering the question of the legality of the grand jury, brief reference should be made to the conduct of the prosecutors in the course of the grand jury proceedings. What happens if both the prosecutors and the grand jury are biased and prejudiced, or if the grand jury is biased and prejudiced and the prosecutors intensify the prejudice by misconduct in the interrogation of witnesses? In such a situation, the law has created an instrumentality which offends all sense of justice. That is the situation we have in the case at bar.

VI

THE LOWER COURT'S CHARGE TO THE GRAND JURY WAS ERRONEOUS

Little need be said concerning the charge of the lower court to the grand jury. The subject is thoroughly discussed in the briefs that have heretofore been submitted and we respectfully submit that the opinion of Judge Donworth on this point commands adoption.

THE CONDUCT OF THE PROSECUTORS IN THE GRAND JURY ROOM WAS ERRONEOUS

Little need be said on this point. The unbridled conduct of the prosecutors, if approved by this Court, constitutes a shocking and dangerous precedent which will discredit the judicial system in our State and most certainly will cause the citizens of the State to lose faith in our system of law enforcement.

In this connection it should be observed that both the charge to the grand jury by the lower court and the conduct of the prosecutors constitutes state action which is subject to review by the United States Supreme Court. Can it be doubted that the Supreme Court will consider such conduct to be a violation of the rights of the defendant under the Fourteenth Amendment?

VIII

THE LOWER COURT ERRED IN REFUSING TO GRANT THE APPELLANT'S MOTIONS FOR A CONTINUANCE AND CHANGE OF VENUE

With respect to appellant's motion for a continuance, Judge Hill relies strongly upon the statement of Judge Malcolm Douglas that the defendant could have as fair a trial in December 1957 as he could have in May 1958. In this connection it is significant that Judge Douglas was in Europe during the summer of 1957 and did not personally observe the intense and bitter nature of the publicity which was involved in the hearings of the McClellan Committee. Not having been exposed to this publicity, he was hardly in a position to evaluate the degree of hostility which was engendered toward the appellant during these hearings.

Moreover, the question of whether the hostility toward the defendant might abate to some degree between November and May was pure speculation; but no reason was ever advanced either by the State or by the lower court for haste in bringing the appellant to trial. Surely, whether or not Judge Douglas was correct in his opinion, the appellant should have been afforded the chance that the hostility toward him might decrease during this period of time. The orderly administration of justice would have been damaged in no way by the continuance which appellant requested.

In connection with the observations of Judge Douglas it is interesting to observe that a judge of the very same court has recently demonstrated an extreme attitude of prejudice toward appellant. On January 21, 1960, during the trial in the case of Wampold vs International Brotherhood of Teamsters (No. 522002) the following proceedings took place:

"Q—(To Mr. Wampold): What was Mr. Beck's position in the International

Union at the time of this conversation?

A—He was the President, International President.

Q—What was his authority at that time?

A—He was the complete master of the union I would say, without any question.

Q—Did anyone ever refuse to obey his orders?

MR. GATES: This is not relevant.
THE COURT (Judge Hodson): Of
course, I have lived in Seattle since 1932.
I know what Mr. Beck's position was
here. He was not only the complete master of the union; he was the complete
master of the city; he dominated the
economy of the northwest.

Have you read Ralph Potts' latest book? He speaks in parables but his meaning is clear. As a matter of fact, I think that when they were building the Public Safety Building over here, they had some motor-driven wheelbarrows. If I am not mistaken, they were in the Teamsters Union.

No, I know enough about the personality of Mr. Beck, having known him slightly—I have observed him for 25 years. You just don't argue with him.

Q-When Mr. Beck gave you orders,

either concerning union matters or his personal affairs, what did you do?

MR. GATES: I don't see the rel-

evancy.

MR. GRUNBAUM: They have gone

into Beck's personal affairs.

THE COURT: Go ahead. Of course, I know what the answer is but put it in the record.

A-I carried out his instructions.

Q—Without question?

A-Yes."

If a Superior Court judge, sworn to try cases objectively and impartially, (see Canons of Judicial Ethics No. 5 and No. 14) honestly and frankly demonstrates such marked bias and preconception, how can it seriously be argued that jurors in the community were not similarly biased?

Judge Boldt, the United States District Judge for the Western District of Washington, Southern Division, apparently had no difficulty in recognizing and accepting the fact that public opinion was hostile toward Beck. In the summer of 1957, Beck, together

with several other individuals, were indicted for conspiracy to evade Beck's income tax returns. In October 1957 the defendants other than Beck moved for a severance on the ground that public opinion was so bitterly hostile toward Beck that it would be impossible for the defendants to obtain a fair trial if they were required to be tried at the same time that Beck was tried. In November 1957 Judge Boldt granted this motion so that subsequently the trial of the action was conducted against Beck Mone. The trial of the other defendants has been continued indefinitely pending determination by the federal appellate courts of certain important questions of law respecting the question of whether certain receipts of Beck constituted taxable income. Thus Beck was required to go to trial in Seattle within a month of the date that the motion for severance was granted by Judge Boldt on the ground that the prejudice against Beck was so great that it would affect the right of his co-defendants to obtain a fair trial.

With respect to the motion for change of venue it need only be pointed out that the distinction that Judge Hill make in the case of State vs Hillman, 42 Wash, 615, seems extremely tenuous. The quotations from the Hillman case at 155 Wash. Dec. 578 are pria marily matters of conclusion and opinion. This portion of the affidavit was no more or less capable of being controverted than was the affidavit filed by appellant in support of his motion for change of venue. The fact is that an examination of the affidavit filed in the case at bar will disclose that there were many more facts stated in the affidavit than were stated in the affidavit submitted in the Hillman case. The fact that the affidavit in the case at bar incorporated by reference other affidavits and exhibits in the case seems to have been disregarded. These facts and exhibits were not controverted because they were true.

ADMISSION OF STATE'S EXHIBITS NOS. 17 AND 18

The admissibility of Exhibits No. 17 and No. 18 has been extensively discussed in the briefs heretofore submitted in this case, and in oral argument. At the trial the theory upon which the State based its offer of these documents was incomprehensible, as was the theory upon which they were admitted. Appellant in his briefs on appeal was, therefore, obliged to mention every conceivable ground for the introduction of the exhibits, and to discuss each of them by way of a process of elimination. On the day oral argument was heard by this Court, the State advanced a new theory and advised the Court, in response to a question, that the theory now constituted the State's position concerning the admissibility of the documents.

The opinion written by Judge Hill and signed by three other judges adopts the view

that the exxhibits "were admissible as secondary evidence, and the best available to the State of what the appellant's records showed as to the source of the nineteen hundred dollars." 155 Wash. Dec. 565, 586. Although this theory was discussed, together with several others, in appellant's reply brief, we are impelled to entreat the Court to reconsider the question and to do so most solemnly. It is inconceivable to us that this Court, or even a single member thereof, could tolerate the consideration of these exhibits by a jury in a criminal case. Either appellant's counsel have heretofore failed utterly in their presentation of this issue, or, if they have not, the Court has decided to abandon a vitally important fundamental principle of evidence and to treat jurors composed of laymen as being competent to decide, not only the probative value of the evidence properly placed before them, but also the initial question of what matters should be considered

by them at all. In either event, if the opinion for affirmance on this point were to be regarded as creating a precedent, the result would be shocking.

The importance of this issue justifies a brief resume of the facts. Exhibit No. 17 was a photostatic copy of a work sheet prepared more than one year after the sale of the automobile by Carl E. Houston, a certified public accountant then working, as an independent contractor, on appellant's income tax return for the year 1956. In the course of taking information from the loose-leaf journal of financial transactions maintained by Marcella Guiry, appellant's secretary, Houston entered on his work sheet the words and figures "Beck/Callahan \$19,000.00" as part of the receipts for February 1956. He discovered his error as to the figure and changed it to \$1,900.00 on February 18. This entry on the work sheet referred to, but did not accurately describe, the sale of the Cadillac automobile.

After Exhibit No. 17 (and the original sheet, Exhibit No. 18) were offered by the State, but before they were admitted into evidence, appellant waived his privilege against self-incrimination and offered to produce for the court the original loose-leaf journal page. The two exhibits were nevertheless admitted. Appellant thereafter at the first opportunity (during his cross-examination of Houston) did produce Exhibit No. 22, which was identified by both Houston and Mrs. Guiry as deing the original record and which was admitted into evidence on the basis of Houston's identification of it. (St. 735, 753, 964). Exhibit No. 22 contained an entry which correctly described the transaction as "Sale Cadillac Auto \$1,900.00." The entry, and all others on the page, were in the handwriting of Mrs. Guiry.

It has heretofore been uniformly accepted that secondary evidence is only admissible if the primary evidence which it reproduces would itself be admissible if produced in court.

Wigmore on Evidence (3rd Ed.), § 1188, p. 330. The first question to be answered, therefore, is that of whether the original journal page would have been admissible had it contained an inaccurate description of the automobile transaction. The opinion written by Judge Hill concludes that such an entry "would support an inference of an intention to conceal the real source of the nineteen hundred dollars." With this, we must respectfully but emphatically disagree.

A. The Original Journal Entry Would Not Have Been Admissible Against Appellant

The language from the opinion favoring affirmance quoted immediately above contains two assumptions. The first is that the jury could properly find that an inaccurate entry in the original record was intentionally made by the person who kept the record and made the entry. The problem here is that, aside from intention, the fact of inaccuracy is based upon assumption, not proof. The sec-

ond assumption is that the jury might properly impute to appellant, by virtue of an inaccurate entry having been intentionally made by someone else, a criminal intent to conceal the real source of the money. This latter assumption we believe to be a markedly erroneous application of the rules of evidence, particularly in a criminal case.

There is not one scintilla of evidence, nor has the State ever contended, that appellant ever gave instructions to Mrs. Guiry with regard to the keeping from day to day of the financial journal. There is no evidence to suggest that he participated in any way in the keeping of the records, or that he had any knowledge whatever of the entries made therein. The evidence is perfectly clear and uncontradicted that Mrs. Guiry was the only person who made the journal entries, and that she did so without supervision. Appellant's main office, in fact, was in Washington, D. C., and he was seldom physically pres-

ent in Seattle. (See St. 666, 732, 734, 736, 754, 964, 965, 1110). Thus, the only possible ground for introducing such an entry against appellant as evidence of wrongful intent is the bare fact that the journal was kept for him by a woman employed as his secretary. Such a purported ground of admissibility is totally repugnant to the established rules of criminal and constitutional law.

The indispensible element of criminal intent is knowledge in the mind of the wrongdoer. United States v. Falcone, 31 U. S. 205, 85 L. Ed. 128; Direct Sales Company v. United States, 319 U. S. 703, 87 L. Ed. 1674; Lee v. United States (9 Cir. 1939) 106 F. (2d) 906; State v. Tembruell, 50 Wn. (2d) 456. Here, with regard to such a hypothetical inaccurate entry in the journal, knowledge on the part of appellant is not only not proved; it is not even suggested by circumstance to an extent which would permit a jury to infer it. The making of such an entry by Mrs. Guiry, even intention-

ally, with nothing shown to implicate appellant personally in the event, could raise no inference whatever against him in a criminal case. As a distinguished writer has put it, "vicarious liability is a conception repugnant to every instinct of the criminal jurist." Francis B. Sayre, Criminal Responsibility for Acts of Another, 43 Harvard Law Review 689, 702. For this reason, the courts have uniformly held that the civil rule that a principal is responsible for the acts of his agent performed within the scope of the latter's authority have no application in criminal law, aside from certain misdemeanors not involving felonious intent. State v. Woolsey, 80 Mont. 141, 59 Pac. 826; People v. Moskowitz, 196 N. Y. Supp. 634; Mann v. Townsley, 226 Pac. 554; State v. Moss, 95 Ore. 616, 188 Pac. 702; State v. Burns, 215 Minn. 182, 9 N.W. (2d) 518; State v. Lamperelli, 141 Conn. 430, 106 A. (2d) 762; Empire Printing Company v. Roden (9 Cir.,

1957) 247 F. (2d) 8; People v. Doble, 203 Cal. 510, 265 Pac. 184.

The last case cited, *People v. Doble*, is precisely in point. The defendant there was charged with fraudulently over-selling a stock issue. The state introduced books kept by an agent which demonstrated the oversale. The California Supreme Court reversed, stating at 265 Pac. 187:

"If we admit that Cox was the agent of appellant, this might allow his declaration made within the scope of his agency to be admitted in a civil case, but human liberty does not rest upon so weak a foundation. A principal, in order to be held criminally liable, must be shown to have knowingly and intentionally aided, advised or encouraged the criminal act committed by the agent. In the absence of such proof, to this extent, the summary of the books should not have been received as a declaration binding on the appellant . . ."[Emphasis added].

The foregoing has postulated for purposes of argument a situation in which the original records kept by Mrs. Guiry for appellant contained an inaccurate entry. It must be reemphasized at this point that there was no testimony at the trial from any witness to support or even suggest that such was the case.

B. Exhibits No. 17 and No. 18 Were Not Admissible As Secondary Evidence

Without in any way altering appellant's position that an inaccurate entry in the original journal would not have been admissible against him, we must submit that it is even clearer that Exhibits No. 17 and No. 18 were in no way admissible as "secondary evidence." It is stated in the opinion of Judge Hill, at p. 586, that the exhibits "were admissible as secondary evidence, and the best available to the State of what the appellant's records showed as to the source of the Nineteen Hundred Dollars." [Emphasis added].

The opinion goes on to state:

"Neither does Houston's present opinion, that he made a mistake (based as it is on his assumption of the authenticity of Exhibit No. 22), nullify the inference to be drawn from his original entry on his work sheet, which he believed to be correct at that time." [Emphasis added].

The only witnesses who testified concerning Exhibits No. 17, No. 18 and No. 22 were Houston and Mrs. Guiry. It is implicit in the above quoted excerpts from the opinion that the testimony of these witnesses laid a foundation for the admission of Exhibits No. 17 and No. 18 as secondary evidence of the contents of some primary document or writing which was not presented in court. A careful re-examination of the record, which we respectfully urge the Court to undertake, reveals that there is no evidence whatever to support this position.

The rules governing the admissibility of secondary evidence are clear and well-established:

(1) There must be foundation testimony tending to show that the secondary evidence accurately reflects the contents of an original document which itself would be admissible if offered. See, e.g., Marshall v. Commonwealth, 140 Va. 541, 25 S.E. 329; Wigmore on Evidence (3rd Ed.) § 1188, p. 330.

- (2) The primary evidence must be unavailable to the party offering the secondary evidence, (for example, outside the jurisdiction, or in the possession of an adverse party who refuses to produce it). See, e.g., City of Roslyn v. Pavlinovich, 112 Wash. 306; 32 C.J.S. Evidence, § 777.
- (3) If an adverse party in possession of primary evidence produces it in court, the use of secondary evidence by the other party is precluded. See, e.g., Am. Jur., Evidence, § 446.

None of these requirements was met in the present case. The primary evidence involved is the original journal page containing Mrs. Guiry's entry recording the automobile transaction. That document, if available, was the only admissible evidence of its own contents

under the best evidence rule. It was and is the contention of appellant that Exhibit No. 22 was that document. When the State offered Exhibit No. 17 as a purported copy, appellant immediately waived his privilege against the production of the original, offered to produce it in court, and did produce it at the first opportunity. The testimony identifying Exhibit No. 22 and establishing it as the best evidence was compelling, and should have precluded respondent from offering any purported secondary evidence of the contents of the journal page.

The opinion written by Judge Hill refers to the witness Houston's "assumption of the authenticity of Exhibit No. 22." It is respectfully urged that Houston was not making an assumption, but testified positively that the exhibit was the very page from which he had prepared his work sheet.

On cross-examination by appellant's counsel (Houston testified as follows:

"Q—Without referring to the contents of the document or reading the contents of the document, Mr. Houston, tell us what relationship it has to the making of State's Exhibit 17 or 18.

A—It was part of Mr. Beck's records and one of the documents that I examined in preparing my statement.

Q-In preparing 17 and 18?

A-That's right.

Q—Or rather in preparing 18, which is the original?

A-That's right."

(St. 349)

On voir dire examination by Mr. Regal, Houston testified as follows:

"Q—Yes. Do you know that this is the record positively that was in the books in March of 1957?

A-Yes.

Q-How do you know that?

A—It was the original document that I procured when I first started to prepare this statement.

"Q-You don't know of your own knowledge that this is the same document

that was in the books of March of 1957? You have no way of determining that other than it resembles it?

A—I have no way of proving it. I am certain it was.

Q-It resembles it?

A-It is the same document exactly.

Q—You are very positive. How are you so positive?

A—Because I examined it so closely." (St. 353-354)

Mrs. Guiry also testified, as pointed out at 155 Wash. Dec. 586, "that she made the entry 'Sale Cadillac Auto \$1,900' in the first part of March, 1956; and that she had not seen the ledger or journal sheet in question since March, 1957, until she saw it in the court room."

It also appears that the trial court concluded that there was no evidence from which an inference could be drawn that Exhibit No. 22 was not authentic. The last witness called by appellant was Mr. Regal, the deputy prosecutor, who was asked the following:

"Q—Now, Mr. Regal, I would like to ask you if on December 7, during the progress of this trial, I stated to you that with regard to defendant's Exhibit No. 22 that that exhibit was available to the prosecution and that I would stipulate to its withdrawal so that the prosecution might subject that document to any test regarding ink, erasures, date of paper, or any other sort of a test which the prosecution desires to make, chemical or otherwise? Did I make that statement to you on December 7?"

(St. 734)

In sustaining an objection to this question, the court remarked:

"THE COURT: Immaterial. I think in order to rebut the matter there must be some affirmative evidence from which some inference could be drawn. That is my reason for saying it is immaterial."

(St. 735)

It should also be mentioned that from and after March 1957, Exhibit No. 22 was in the possession first of Kenneth Short and then of Charles S. Burdell, both of whom are attorneys practicing in Seattle. The opinion of

Judge Hill mentions the possibility "that Marcella Guiry prepared a new ledger or journal sheet and substituted it for the original after the grand jury investigation and before the trial." 155 Wash. Dec. 585, 586. The grand jury investigation did not begin until a considerable time after March 1957, and any such criminal act on the part of Mrs. Guiry would, therefore, have had to occur while the document was in the possession of one of the two attorneys mentioned.

The authentication of Exhibit No. 22 was thus thorough and unequivocal. It is, of course, true, as the opinion of Judge Hill points out, that the jury could choose to disbelieve the authenticity of Exhibit No. 22, just as they can choose to disbelieve any testimony or evidence. But the fact remains that no evidence of any kind was introduced to show that Exhibit No. 22 was not the true primary document, and the jury's right to disbelieve cannot serve as a substitute for the

foundation evidence which is a prerequisite to the admission of purported secondary documents.

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The primary or best evidence in this case was thus not only available to the prosecution but was actually produced and admitted by the court. The opinion of Judge Hill rightly points out, at page 586, that the primary evidence "was a part of the books and records" of the appellant, which the State could not subpoena or demand that he produce." Thus, initially, the primary evidence was not available to the State. However, this condition ceased prior to the admission of Exhibits Nos. 17 and 18 when appellant waived his privilege against self-incrimination and offered to produce the original document. As indicated above, it is basic to the best evidence rule that secondary evidence loses all claim to admissibility when the adverse party timely agrees to produce the primary evidence. This rule is applicable in civil and criminal cases alike.

See Rocchia v. United States, (9 Cir., 1935) 78 F. (2d) 966 .970. It would be absurd to place a criminal defendant in a weaker position than a civil litigant with regard to the perils of inaccuracies and copying errors which are involved in secondary evidence. A criminal defendant is entitled to waive his privilege as to real evidence as well as to his own testimony. When appellant here waived the privilege as to the journal page, the State should have been totally precluded from offering secondary evidence, particularly in the absence of any testimony whatever tending to demonstrate that Exhibit No. 22 was not the true original. To hold otherwise on this record would be to abolish the requirement that the primary evidence be unavailable.

There remains the first requirement mentioned above for the admission of secondary evidence: That of foundation testimony to establish that the secondary document accurately reflects the contents of an unavailable

primary document. On this score, the testimony of Houston and Mrs. Guiry is not merely insufficient, but is the exact reverse of what is required for such a foundation. Houston did not testify that Exhibits Nos. 17 and 18 correctly reflected the contents of an entry in the journal kept by Mrs. Guiry. His testimony was exactly the opposite. He testified positively that Exhibit No. 22 was the identical page from which he took his information in preparing the work sheets. He insisted that this was so throughout extensive examination by counsel for both sides, and concluded that he must have made a mistake (and a very logical one in view of the preceding entry regarding Beck/Callahan) when he listed the Cadillac sale. As to Mrs. Guiry's testimony that Exhibit No. 22 was the original which she prepared in March 1956, the only possible inference to be drawn therefrom is that it was the page with which Houston was working. The record is thus utterly devoid of anything

tending to show that Exhibit No. 17 constituted a secondary copy of a primary document. Instead, all of the testimony is directly to the effect that the entry in Exhibit No. 17 was an erroneous transposition of two entries on Exhibit No. 22. It is because of the natural frequency of such errors that the rules restricting the use of secondary evidence have always been stringently applied by the courts. As Wiamore points out:

"As between a supposed literal copy and the original, the copy is always liable to errors on the part of the copyist, whether by wilfullness or by inadvertance; this contingency fully disappears when the original is produced." Wigmore on evidence, (3rd Ed.) Vol. IV, p. 318.

It is impossible to imagine how evidence such as this could constitute a foundation for the admission of Exhibits No. 17 and No. 18.

The opinion of Judge Hill states:

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"Neither does Houston's present opinion, that the made a mistake . . . nullify the inference to be drawn from his original entry on his work sheet, which he believed to be correct at that time." [Emphasis supplied]

Can it be seriously contended that Houston's belief in March 1957 that he had copied the entries correctly is admissible to establish such to be the fact when, in a trial nine months later, he testifies positively that he did not copy them correctly? Any statement of belief by him "at that time" (March 1957) would be nothing more than inadmissible hearsay at the trial, utterly devoid of evidentiary value except conceivably for purposes of impeachment. See 98 C.J.S., Witnesses, § 628; State v. Yoakum, 37 Wn. (2d) 137.

Let us assume that in March 1957, instead of transcribing the journal entries on a work sheet, Houston had read them and then signed a statement for the prosecuting attorney averring that they showed the source of the \$1,900 as being a "Beck/Callahan" transaction. Such a written statement would obviously be inadmissible as probative evidence

at the trial. Its only possible usefulness would be to impeach Houston if he testified to the contrary. See State v. Fliehman, 35 Wn. (2d) 243; State v. Thorne, 43 Wn. (2d) 47.

If in this hypothetical situation the court permitted the hearsay signed statement to be used as evidence against appellant, such a ruling would be identical to one which permits Exhibits No. 17 and 18 to go to the jury in the face of Houston's direct testimony at the trial that they were not correct copies of the original journal sheet.

The opinion of Judge Hill, with reference to its statement that the State was not bound by, nor was the jury obliged to believe, the testimony of Mrs. Guiry, cites Unosawa v. Wright, (1954), 44 Wn. (2d) 777. We must urge with all due respect that the citation of this case illustrates the error in this section of the opinion. The Unosawa case was simply a trial to the Court in which the trier of the facts disbelieved the plaintiff's evidence on the

merits, branded his claim as improbable, and dismissed the suit. This Court reviewed the record and affirmed. The decision is concerned solely with the weight and sufficiency of the evidence and the propritey of the trial court's findings, not with the admissibility of documents. This distinction isolates what we are convinced after painstaking study is the basic flaw in the present opinion.

- (1) It is beyond cavil that the trier of fact is entitled to disbelieve the testimony of any witness and to refuse to accept the genuineness of any document; but
- (2) It is equally incontestible that a document cannot be qualified for admission into evidence by the testimony of witnesses who describe it as not competent on the ground that the trier of fact may disbelieve the witnesses and conclude that the document is competent.

In the present case, the testimony of Houston and Mrs. Guiry was unqualifiedly to the

effect that Exhibits No. 17 and No. 18 were not competent. It is the theory of Judge Hill's opinion that they were nevertheless admissible because the jury was entitled to disbelieve the witnesses. To the best of our knowledge such a view is without precedent in any court, and it was the grave consequences of such a holding that impelled us to remark at the outset of this section of the brief that, if adhered to, it would constitute an abandonment of a basic exclusionary rule of evidence. To permit the jury to consider documents as to which no scintilla of qualifying foundation evidence has been presented is to abdicate to them the function of ruling upon admissibility. It is of no help to call the matter a question of "weight." Juries will undoubtedly assign whatever weight they see fit to any document before them, whether it is competent or not. If the present holding were adhered to, a ruling like the following hypothetical would be entirely proper:

"'A' sues 'B' for damages, alleging fraudulent misrepresentation in a real estate sale. The case is tried to a jury. 'A' calls 'B' as an adverse witness, hands him a document purporting to be a map which incorrectly shows the property lines, and asks him if it is not the map which he prepared and showed to 'A' for the purpose of inducing him to buy. 'B' testifies that he did not draw the map, did not show it to 'A' and has never seen it before. The court admits the exhibit on the ground that the jury is not obliged to believe 'B's' testimony, stating that the weight of the exhibit is a question for the jury."

Such a ruling would, of course, be reversed by this Court without hesitation. Yet, it is identical with the present holding which approves the admission of Exhibits No. 17 and No. 18 on the grounds that the jury was en titled to disbelieve the testimony of Houston and Mrs. Guiry that the exhibits were not secondary evidence of an unavailable primary document.

C. The Admission of Exhibits No. 17 and No. 18 Constituted Prejudicial Error

It must finally be emphasized that these two exhibits were of the utmost importance at the trial. They constituted the prosecution's only purported evidence of concealment. One of the deputy prosecutors conceded that their exclusion from evidence might be fatal to the State's case (St. 701), and they were referred to with vigor in closing argument. Their admission was not merely erroneous but was manifestly prejudicial to appellant.

X

THE PROSECUTION COMMITTED MISCONDUCT IN THE CROSS-EXAMINATION OF THE WITNESS MARCELLA GUIRY.

In view of the crucial importance of Exhibits No. 17 and No. 18 (which had been admitted in evidence on some theory during the course of the State's case) the testimony of Marcella Guiry was of the greatest importance to the defendant, although it prob-

ably would have been unnecessary to call Mrs. Guiry as a witness had it not been for the erroneous admission of Exhibits No. 17 and No. 18. Mrs. Guiry identified Exhibit No. 22 which was the original of the document of which Exhibits No. 17 and No. 18 were said to be "the best available evidence." Exhibit No. 22 is a ledger sheet in which Mrs. Guiry recorded certain personal receipts of Mr. Beck. Exhibits No. 17 and No. 18 are not copies of Exhibit No. 22. They are merely work sheets which were preliminary and rough summaries of certain of the information on Exhibit No. 22. Exhibit No. 22 contains a correct entry showing that Beck received the sum of \$1,900 in connection with a transaction designated as "Sale of Cadillac." Mrs. Guiry testified that she was a secretary for Beck and that her duties included keeping Beck's personal financial records. She stated that she made all the entries on Exhibit No. 22 (St. 964) and that it was made in February

or March of 1956 shortly after the transaction which is the subject of this indictment took place (St. 965). She then testified that Exhibit No. 22 was in her possession until March 1957 at which time she delivered it to Mr. Kenneth Short, an associate of Mr. Tracy Griffin, who was then representing Mr. Beck (St. 965). This testimony is confirmed by Mr. Short (St. 872). She testified that until the document was shown to her at the trial, she had not seen it at any time since she delivered it to Mr. Short (St. 965). She testified that she did not at any time make any similar document, nor did she ever make any different entry with respect to the entry of February 3, 1956 which was designated as a sale of a Cadillac automobile (St. 965). She testified that after March of 1957, she did not at any time prepare a journal sheet relating to any transaction which took place in the months of January or February 1956 (St. 967). This testimony was significant because it was the

State's position that the entry relating to the sale of the Cadillac had originally been falsified by Mrs. Guiry but that the alleged falsification had been procured after the grand jury proceedings which took place in May 1957. Mrs. Guiry testified that she had never seen Exhibits No. 17 or No. 18 and that she had never made an entry designating the receipt of the \$1,900 for the sale of the Cadillac as "Beck-Callahan transaction" (St. 967-968).

Incidentally, it is apparent from Mrs. Guiry's testimony that Mr. Beck was absent from Seattle a great deal of the time in the performance of his function as president of the International Brotherhood of Teamsters. This fact is further declared at various points throughout the statement of facts. Accordingly (it cannot be argued that the mere circumstance that Mrs. Guiry was designated as Mr. Beck's secretary or that she maintained his financial records warrants the inference that Beck had any knowledge or gave any

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directions concerning the method by which Mrs. Guiry kept or maintained his records. On the contrary, the fact that Mrs. Guiry had authority to endorse checks for Beck and deposit them in his personal bank account demonstrates that he delegated considerable authority to her and that he did not participate in the maintenance of his personal financial records.

At the conclusion of Mrs. Guiry's testimony, Mr. Regal, representing the State, advised the court that he desired to impeach her by showing that she asserted her privilege under the Fifth Amendment at the time she was subpoensed to testify before the grand jury, although the method and circumstances under which she was required to attend the grand jury session and the question of whether she was given authority to consult her lawyer is a matter of considerable interest but which was not fully disclosed at the trial. Mr. Regal did, however, acknowledge

that "she was subpoensed and brought in in a hurry" and that she was subpoensed and appeared forthwith (St. 986). The record of Mrs. Guiry's grand jury testimony indicates that she asked for time to consult an attorney and was told that she had no inherent right to do so prior to her testimony (St. 1008).

Inadvising the court concerning his intention with regard to his proposed interrogation of Mrs. Guiry, Mr. Regal stated (St. 982):

"... I don't think it is proper under the circumstances that I ask a question that would be objectionable and even though it wouldn't amount to grounds for a mistrial, it would compel the court to sustain the question. I don't think that is proper conduct on the part of counsel under any circumstances."

In response to Mr. Regal's proposed impeachment, the court declared (St. 956):

"I cannot conceive anytime when the claiming of a constitutional right and privilege has any implication of anything but innocence. Therefore, it does not amount to impeachment. Therefore it is not proper impeachment."

In connection with further argument on the question of the right to impeach Mrs. Guiry, the court again emphatically ruled, concerning Mrs. Guiry's assertion of her privilege that "question should not be asked concerning those questions and answers before the grand jury ..." (St. 996). In fact, the court advised counsel that the asking of such question would be unconstitutional (St. 998).

In response to this ruling, Mr. Regal stated that: "I realize that Your Honor has ruled on the precise question."

Thereafter the cross-examination of Mrs. Guiry was commenced (St. 1014). Very shortly, counsel commenced to refer to the fact that she had appeared before the grand jury, a matter which was completely immaterial in view of the fact that the court had ruled that it would not permit impeachment of the witness by showing that she had asserted her privilege under the Fifth Amendment (St. 1017-1018). Mr. Regal concluded by showing

Mrs. Guiry State's Exhibit No. 10 (which was apparently an exhibit with respect to which Mrs. Guiry had asserted the privilege) and Mr. Regal then proceeded as follows:

"Q—Did you see that last summer when you testified before the grand jury?

A-Yes, sir.

Q—Was your answer the same then as it is now regarding this exhibit?

MR. BURDELL: I object to that as improper and immaterial because the Court knows she gave no answer.

THE COURT: Objection sustained." (St. 1019).

The opinion of Judge Hill, and the judges who concurred in his opinion, holds that such conduct on the part of the prosecutor was proper, and that in any event the trial court concluded that the question was not prejudicial.

While commendable for its craft, there can be no question but that the question posed to Mrs. Guiry was a deliberate attempt on the

part of the prosecutor to disclose a fact which the court had clearly ruled was immaterial and improper. The deliberate interrogation of a witness, either directly or indirectly, on a point which the court has ruled to be immaterial is indefensible, and the fact that an objection to the question was sustained does not cure the error. Similarly, the fact that there was only one objectionable question is no defense for such conduct. The jury was conscious of and sensitive to the Fifth Amendment problem, this matter having been disclosed and considered at length during the course of the voir dire examination and the jury doubtless recognized the point which the prosecution was attempting to establish. Insofar as it was necessary for appellant's counsel to raise this question on the voir dire examination (no doubt with the complete approval of the court) this would not authorize misconduct with respect to this subject in the subsequent examination of appellant's witness. The fact that the objection was sustained does not cure the error. See State v. Crotts, 22 Wash. 245; State v. Belnap, 44 Wash. 605.

This general subject is covered at length in an annotation in 109 ALR 1088. In this annotation, it is pointed out that similar questions, as well as a series of questions, may well constitute misconduct and it is also pointed out that the sustaining of an objection to an improper question does not cure the error in asking the question. The annotation concludes as follows (p. 1096):

"In fine, one may say that the extent to which in jury trials, the practice of knowingly asking witnesses improper or prejudicial questions has come to be indulged in, indicates the need for a policy which will make the practice unprofitable. The fact that attorneys have earnestly argued that they are entitled to the 'benefit' before the jury of their opponent's action in objecting to such questions is significant of the extent to which fidelity to the ideal of justice has yielded to the unbridled notion that the adminis-

tration of the law is a game in which victory belongs to him who is most ingenious in turning the existing rules to his advantage. Verdicts so gained should not be retained. To use the language of the Kentucky Supreme Court, 'no litigant should be permitted to profit by such practice.'"

See also State v. Yoakum, 37 Wn. (2d) 137. In the latter case, this Court points out that the mere asking of a question may constitute prejudice, even if objection to the question is sustained.

In Judge Hill's opinion the conduct of the prosecution is justified in part by the assertion that the trial court observed no prejudice. Actually, as the record shows, this was a difficult and strongly contested issue of law. Doubtless no one recalls with any degree of certainty whether the trial court was or was not observing the jury at this point, but the probability is that the court was extremely concerned about the conduct of counsel and that his attention was devoted primarily to

the questions which were being asked by Mr. Regal and the objections which were being made by Mr. Burdell. In any event, the case of State v. Yoakum, supra, indicates that where such misconduct occurs, there is no necessity of a specific finding of prejudice to the defendant. Moreover, this conduct on the part of Mr. Regal was but one step in a series of acts by the State which violated the Fourteenth Amendment to the United States Constitution and where violations of that Amendment are shown, it is not necessary for a defendant to assume the burden of establishing prejudice. See, among many other cases, the decision in State v. Marsh, 126 Wash. 142.

Moreover, the opinion of Judge Hill itself indicates that the conduct of Mr. Regal did in fact result in prejudice to the appellant. In asserting that Exhibits No. 17 and No. 18 were properly admitted, Judge Hill asserts that the jury was not obliged to believe the testimony of Mrs. Guiry to the effect that Exhibit No. 22

constituted her original entry with respect to the transaction involved in this case and that it correctly described and designated such transaction. If the jury believed Mrs. Guirv's testimony, then Exhibits No. 17 and No. 18 would not have been admissible as secondary evidence because they were not accurate reproductions of the entries on Exhibit No. 22. Only disbelief of Mrs. Guiry could possibly warrant the admissibility of Exhibits No. 17 and No. 18 (and even this would not warrant the admission of these exhibits, because Beck was not shown to have had any connection whatsoever with the making of any one of the three exhibits). But this case cannot be affirmed on the "have your cake and eat it too" theory. An examination of Mrs. Guiry's testimony clearly demonstrates that if the jury did not believe Mrs. Guiry, such disbelief must have resulted from the objectionable question asked by Mr. Regal. This did establish the prejudice which Judge Hill asserts

was lacking, (unless the jury disbelieved Mrs. Guiry simply because of prejudice against Beck and the fact that Mrs. Guiry was a secretary of Beck, in which case it is clear that the motion for continuance should have been granted). On the other hand, if the jury did believe Mrs. Guiry concerning the authenticity of Exhibit No. 22, then Exhibits No. 17 and No. 18 should not have been admitted in evidence. Either the ruling on the admissibility of the exhibits, or the ruling on the conduct of counsel, must have been erroneous. The prosecution cannot proceed in one instance on the theory that Mrs. Guiry committed perjury, thus warranting the admissibility. of the exhibits, and in the second instance on the theory that the conduct of counsel did not affect the jury's evaluation of testimony of Mrs. Guiry.

XI

CONCLUSION

In this brief we have not discussed all of the questions which were argued in the briefs heretofore submitted by appellant. By omitting such discussion, we do not intend to abandon those points in connection with reargument or rehearing and we incorporate by reference herein the arguments on these points which were made in appellant's opening brief and reply brief.

Some of the procedures which have been countenanced and approved in the opinion of Judge Hill may reflect upon the fairness of the judicial system and law enforcement procedures of this State. This is particularly apparent from the appendix to Judge Donworth's decision, which includes the interrogation of the witness Verscheuren in the course of the grand jury proceedings. We strongly urge that for the time being, the court order that the opinions in this case not

be printed in the bound volumes of the Washington Reports or the Pacific Reports.

In view of the fact that the Court is equally divided on one more issue, and in view of the importance of several other issues in the case which involve constitutional questions, we request that oral argument be ordered on the petition for rehearing under Rule 50 of the · Rules on Appeal, as well as on the petition for reargument under RCW 2.04.170 and Rule 15 of the Rules Peculiar to the Business of the Supreme Court. In view of the fact that an added difficult problem is raised by the equally divided opinions, we believe that oral argument of one hour to each party is necessary and would be of assistance to the Court.

It will be observed that Mr. R. V. Welts, of Mount Vernon, has been joined as counsel for appellant. We believe that the observations and argument of Mr. Welts concerning the effect of the equally divided opinions may be of considerable assistance to the Court.

Several decisions which may be helpful have been omitted from the foregoing argument. These decisions are as follows:

(1) Divided Court

Padgett v. State (Fla. 1928) 116 So. 18. In this case the Supreme Court of the State of Florida, absent a statute on the subject, reversed, rather than affirmed, a judgment of conviction in the trial court, where the Supreme Court was equally divided.

Larramore v. State (Fla. 1933) 195 So. 732. In this case the Supreme Court of Florida affirmed, by a divided court, a judgment of conviction in the trial court, but despite the fact that the court was divided in its opinion, all members of the court decided that the judgment of conviction should be affirmed. No doubt this Court will refuse to indulge in any such mental gymnastics.

(2) Due Process

The following cases contain general definitions of the nature of due process which may be helpful:

Mooney v. Holohan, 294 U. S. 103, 79 L.Ed. 791; Rochin v. People of California, 242 U. S. 165, 72 S. Ct. 205, 96 L. Ed. 183, 25 ALR (2d) 1936.

Washington State Constitution, Article I, § 32 provides:

"A frequent recurrence to fundamental principles is essential to the security of individual right and the perpetuity of free government."

(3) Power of United States Supreme Court to determine evidence of discrimination or prejudice.

The United States Supreme Court has the power to determine whether or not error in the trial court which involves constitutional rights results in discrimination or prejudice, and this power is not affected by local practice or by the findings of the state courts.

Annotation: 94 L.Ed. 856.

Smith v. Texas, 311 U. S. 127, 85 L.Ed. 84, 61 S. Ct. 164.

(4) Effect of asking objectionable question where objection is sustained.

Braseth v. Farrell, 56 Wash, 365.

(5) Grand Jury.

Effect of misconduct of prosecutors during course of grand jury proceedings.

State v. Montgomery, 56 Wash. 443; 4 Wharton's Criminal Law and Procedure (1957) § 1716, p. 480.

Impartiality of grand jurors is required. Stirone v. United States, 80 S. Ct. 270.

(6) Necessity of establishing prejudice where Violation of constitutional right has been established.

Panksley v. United States (9 Cir. 1944), 145 F. (2d) 558.

As we pointed out in the introduction to this brief it is frequently asserted by attorneys that appellate courts often resort to technicalities, legal fictions, and presumptions. It is said that the application of such methods of decision is not uniform but varies from case to case depending upon the result which the appellate court desires to obtain. We recognize that all reasoning is subjective and frequently motivated by subconscious influences. The law is not a pure science and no man has the ability to reason with precise objectivity in this tremendously difficult field of human endeavor. But we respectfully submit that the opinion of Judge Hill, which is concurred in by three other judges, lends itself to the charge that a continuous use of nice technicalities and legal fictions have been utilized. We are prompted to say this because of our duty to our client. as well as our duty as officers of this Court. but we do so with full recognition of the fact that our own mental processes may be to a greater or lesser degree subject to a similar criticism. Nevertheless, we most seriously and conscientiously urge that the opinion be reexamined from the point of view of procedure,

not personal views of guilt or innocence. We are firmly persuaded that proper procedure in this case would have permitted the defendant to develop additional facts in which case the verdict of the jury might have been "not guilty."

Respectfully submitted,

CHARLES S. BURDELL
Logan Building
Seattle 1, Washington

R. V. WELTS Mt. Vernon, Washington

JOHN J. KEOUGH Central Building Seattle 4, Washington

Attorneys for Appellant

That with respect to the statements of Judge Hodson. as contained in the brief filed by appellant, affiant avers from personal knowledge that Judge Hodson was in error concerning his belief that motor driven wheelbarrows were operated by members of the Teamsters Union in connection with construction of the buildings referred to by Judge Hodson: that it is true that motor driven wheelbarrows are to some degree used in the construction of buildings, and that in fact some wheelbarrows of this type were used in connection with the construction of the building referred to, but these vehicles are operated by members of the Laborers and Hodcarriers Union and the specific vehicles which were used in connection with the construction of the building referred to by Judge Hodson were operated by members of that Union and that this is the general practice in the industry.

Charles S. Burdell

Subscribed and sworn to before me this 9th day of March, 1960.

Virginia H. Berk, Notary Public in and for the State of Washington, residing at Seattle.

(Notarial Seal)

[fol. 2640] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent,

V.

David D. Beck, also known as Dave Beck, Appellant.

ORDER DIRECTING RESPONDENT TO FILE AN ANSWER TO A PORTION OF APPELLANT'S PETITION FOR REARGUMENT, PETITION FOR HEARING, AND BRIEF IN SUPPORT THEREOF—April 13, 1960

Appellant having filed his petition for reargument, petition for hearing, and brief in support thereof, it appears to this court that this petition presents a question of law not heretofore presented in this case; and, a majority of the court concurring,

It Is, Therefore, Ordered that the Clerk of this court mail a copy of appellant's petition to the attorneys for respondent, with a request that they file three copies of an answering brief directed solely to the question of the constitutional right of the Supreme Court of this State to permit a criminal judgment and sentence, based upon a jury verdict, to stand when this court is equally divided for affirmance and for reversal; the answering brief to be filed within fifteen days, and a copy thereof served on counsel for appellant.

For the Court.

Dated this 13th day of April, 1960.

Frank P. Weaver, Chief Justice.

[fol. 2641] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON
No. 34636

THE STATE OF WASHINGTON, Respondent,

V.

David D. Beck, also known as Dave Beck, Appellant.

ORDER GRANTING ORAL ABGUMENT-May 23, 1960

Whereas appellant's petition for rehearing is pending before this court; and

Whereas appellant's petition, respondent's answer thereto, and appellant's reply present a constitutional question not heretofore argued orally before this court; now, therefore, a majority of the court agreeing:

It Is Ordered:

That oral argument directed solely to the question of the constitutional right of the Supreme Court of this state [fol. 2644] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON No. 34636

THE STATE OF WASHINGTON, Respondent,

DAVID D. BECK, also known as DAVE BECK, Appellant.

ORDER ADHERES TO PER CURIAM OPINION-June 14, 1960

This matter came on for rehearing on this day, the court being equally divided on the merits, one judge having disqualified himself, the majority of the court adheres to the Per Curiam opinion heretofore filed.

Dated this 14th day of June, 1960.

By the Court:

Frank P. Weaver, Chief Justice.

NAS

[fol. 2645] ORDER CONTINUING APPELLANT'S CASH BOND ON APPEAL—June 24, 1960 (omitted in printing).

[fol. 2647] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 34636

STATE OF WASHINGTON, Respondent,

DAVID D. BECK, also known as DAVE BECK, Appellant,

PETITION FOR REHEARING-Filed July 13, 1960

Comes Now the Appellant through his attorneys and respectfully petitions this Court for a rehearing in the above entitled case on the following grounds:

- 1. The Order of June 14, 1960, does not recite the grounds upon which the Court can affirm a criminal case by a four-four decision.
- 2. The Court has no power to affirm a criminal case by a four-four decision.
- 3. The Court has not rendered an opinion in conformity with Rule 14 of the Rules Particular to the Business of the Supreme Court, particularly in that the Order of June 14, 1960, was not in fact a per curiam decision.
- 4. The Court has no authority to render per curiam decisions where, as demonstrated by the Order of June 14, 1960, the decision is not agreed upon by all Judges.
- 5. The Court failed to pass upon the constitutionality of the power of the Court to affirm a criminal case by a fourfour decision under the Constitution of the State of Washington and the Fourteenth Amendment of the United States Constitution.

[fol. 2648] 6. The Order of June 14, 1960, was contrary to Article IV, Section 2 of the Constitution of the State of Washington and Rule 15 of the Rules Particular to the Business of the Supreme Court, in that a majority of five Judges is necessary to render an opinion and that the grounds of the decision were not stated.

In support hereof appellant cites and restates all grounds and authorities heretofore cited including the Memorandum in Support of Motion to Strike filed herewith.

Charles S. Burdell, Logan Building, Seattle 1, Washington, R. V. Welts, Mt. Vernon, Washington, John J. Keough, Central Building, Seattle 4, Washington, Attorneys for Appellant.

[fol. 2649] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON No. 34636

STATE OF WASHINGTON, Respondent,

DAVID D. BECK, also known as DAVE BECK, Appellant.

MOTION TO STRIKE-Filed July 13, 1960

Comes Now the Appellant through his attorneys and respectfully moves this Court for an order striking the Order entered in this case on June 14, 1960.

This motion is based upon the following grounds:

- 1. The Order of June 14, 1960, does not recite the grounds upon which the Court can affirm a criminal case by a four-four decision.
- 2. The Court has no power to affirm a criminal case by a four-four decision.
- 3. The Court has not rendered an opinion in conformity with Rule 14 of the Rules Particular to the Business of the Supreme Court, particularly in that the Order of June 14, 1960, was not in fact a per curiam decision.
- 4. The Court has no authority to render per curiam decisions where, as demonstrated by the Order of June 14, 1960, the decision is not agreed upon by all Judges.
- 5. The Court failed to pass upon the constitutionality of the power of the Court to affirm a criminal case by a four-four decision under the Constitution of the State of Washington and the Fourteenth Amendment of the [fol. 2650] Constitution of the United States.
- 6. The Order of June 14, 1960, was contrary to Article IV, Section 2 of the Constitution of the State of Washington and Rule 15 of the Rules Particular to the Business

of the Supreme Court, in that a majority of five Judges is necessary to render an opinion and that the grounds of the decision were not stated.

Charles S. Burdell, Logan Building, Seattle 1, Washington, R. V. Welts, Mt. Vernon, Washington, John J. Keough, Central Building, Seattle 4, Washington.

[fol. 2651] [File endorsement omitted]

In the Supreme Court of the State of Washington No. 34636

THE STATE OF WASHINGTON, Respondent,

V.

DAVID D. BECK, also known as DAVE BECK, Appellant.

ORDER DENYING PETITION FOR REHEARING AND STRIKING
MOTION TO STRIKE—August 22, 1960

Appellant having filed, on July 13, 1960, (a) a petition for rehearing and (b) a motion to strike being a duplication of the petition for rehearing) an order of this court dated June 14, 1960; and the same having been considered by this Court, and more than a majority of this Court agreeing,

It Is Ordered that said petition for rehearing be and the same is hereby denied; it is further

Ordered that the motion to strike is hereby stricken from the motion calendar.

Dated this 22nd day of August, 1960.

By the Court:

Frank P. Weaver, Chief Justice.

[fol. 2652]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 34636

King County No. 30967

THE STATE OF WASHINGTON, Respondent,

VS.

DAVID D. BECK, also known as DAVE BECK, Appellant.

JUDGMENT-August 22, 1960

This cause having been heretofore submitted to the court, upon the transcript of the record of the Superior Court of King County, and upon the argument of counsel, and the Court having fully considered the same and being fully advised in the premises, it is now, on this 22nd day of August, A. D. 1960, on motion of Charles O. Carroll, Esquire, of counsel for respondent, considered, adjudged and decreed, that the judgment of the said Superior Court be, and the same is hereby affirmed with costs; and that the said State of Washington have and recover of and from the said David D. Beck, also known as Dave Beck, the costs of this action taxed and allowed at Three hundred sixty-nine and no/100 (\$369.00) Dollars, and that execution issue therefor. It is further ordered that the present cash bond of Three Thousand and no/100 (\$3,-000.00) Dollars, on deposit with the Clerk of the Superior Court, shall remain in ful! force and effect until such time as the United States Supreme Court shall dispose of his case. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

IN THE SUPREME COURT

N sement omitted]

OF THE STATE OF WASHINGTON

STATE OF WASE 34636

DAVID D. BECK, a/k vs.

'a Dave Beck, Appellant.

ORDER RE TRANSMITTAL OF____

THE UNITED STA RECORDS TO SUPREME COURT OF

This matter having cores—January 10, 1961
Chief Justice of the Supreme on before the undersigned of the appellant, who is mme Court upon the application Certiorari to the United Staking a petition for a Writ of O. Carroll, Prosecuting Astes Supreme Court, and Charles ington attended for the county. Washington attended for the county.

ington, attorneys for respondent State of Washington having approved said application, it being considered proper that the original papers and documents be inspected by the Supreme Court of the United States in lieu of copies, pursuant to Rule 10(4) Rules of the Supreme Court of the United States, now, therefore, it is hereby

Ordered that the Clerk of this court on request of appellant transmit to the Clerk of the Supreme Court of the United States the original sherein, duly certified by the and the statement of facture with such copies or photo-Clerk of this court, togethed duly certified copies of prostatic copies of exhibits appellant may request by praecipe. ceedings in this Court as ap

It is further mittal of the aforesaid papers one at the expense of the ap-

ordered that the transiand documents shall be documents at Olympia, Washington, 1961.

[fol. 2654] Done In Changert O. Finley, Chief Justice. this 10th day of January,

Presented by:

Edward Hilpert, Jr., Of Forguson & Burdell, Attorneys for Appellant.

Approved as to Form and Notice of Presentation Waived:
Charles O. Carroll, Prosecuting Attorney for King
County, By Joel A. C. Rindal, Deputy.

[fol. 2655] Praecipe—January 5, 1961 (omitted in printing).

[fol. 2657]

IN THE SUPREME COURT OF THE STATE OF WASHINGTON
No. 34636

STATE OF WASHINGTON, Respondent,

٧.

DAVID D. BECK, a/k/a DAVE BECK, Appellant.

CLERK'S CERTIFICATE

State of Washington, County of Thurston, ss.:

I, Robert Holstein, Clerk of the Supreme Court of the State of Washington, do hereby certify that the foregoing is a full, true and correct transcript of so much of the records and files in the above-entitled cause as I am directed by the Praccipe of Ferguson and Burdell, Attorneys for Petitioner herein, to forward to the Clerk of the Supreme Court of the United States as a part of the record on certiorari.

I further certify that the original transcript; statement of facts; copies of exhibits 17, 18 and 22; and supplemental statement of facts are certified separately.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court this 14th day of January, 1961.

Robert Holstein Clerk of the Supreme Court of the State of Washington [fol. 2658]

Supreme Court of the United States
No. —, October Term, 1960.

DAVID D. BECK, Petitioner.

V.

WASHINGTON

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—November 18, 1960

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including

January 19th, 1961.

Wm. O. Douglas, Associate Justice of the Supreme Court of the United States.

Dated this 18th day of November, 1960.

[fol. 2659]

Supreme Court of the United States No. 665, October Term, 1960.

DAVID D. BECK, Petitioner,

VS.

WASHINGTON

ORDER ALLOWING CERTIORARI-April 3, 1961

The petition herein for a writ of certifrari to the Supreme Court of the State of Washington is granted limited to questions 1, 2, and 3 presented by the petition which read as follows:

- "1. Where accusation is by a grand jury indictment, does a person (in this case a member and officer of a labor union who at the time of the grand jury proceedings was the subject of continuous, extensive and intensely prejudicial publicity) have a right under the due process and equal protection clauses of the Fourteenth Amendment to have the charges and evidence considered by a grand jury which was fair and impartial or, at least, which was instructed and directed to act fairly and impartially?"
- (a) Where petitioner was a member and officer of a labor union, and where prejudicial and inflammatory charges against him were being widely and intensively disseminated by all news media, did he have a right under the due process and equal protection clauses of the Fourteenth Amendment to have the grand jury impaneled in a manner which would prevent or at least tend to prevent the adaption of biased and prejudiced grand jurors?
- (b) Was it a denial of due process and equal protection as guaranteed by the Fourteenth Amendment for the Court, in the course of instructing the grand jury, to make statements of an inflammatory nature, prejudicial to petitioner, including a statement that testimony before a United States Senate Committee had disclosed that officers of the Teamsters Union (including petitioner) "... had through trick and device, embezzled or stolen hundreds of thousands of dollars of the funds of that union—money which had [fol. 2660] come to the union from the dues of its members . . . !"
- (c) Where petitioner's rights under the due process and equal protection clauses of the Fourteenth Amendment violated by inflammatory statements of the prosecutors made in secret session of the grand jury, including statements of disbelief of testimony favorable to petitioner, threats of perjury charges against a witness who gave testimony favorable to petitioner, and other statements of an inflammatory nature prejudicial to petitioner?

- "2. Was the petitioner's right to a fair trial, as guaranteed by the due process and equal protection clauses of the Fourteenth Amendment, violated where a timely motion for a continuance was denied, although inflammatory and prejudicial statements concerning petitioner had been widely and intensively disseminated in the press and in national magazines, and through the media of radio and television, commencing prior to the indictment of petitioner and continuing until the date of trial?
- "3. Was the petitioner's right to a fair trial, as guaranteed by the due process clause of the Fourteenth Amendment, violated where a seasonable application for a change of venue was denied, although inflammatory and prejudicial statements concerning petitioner had been widely and intensively disseminated in the press and in national magazines, and through the media of radio and television, commencing prior to the indictment of petitioner and continuing until the date of trial?"

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ. No. 655

Office-Supreme Court, U.S.

FILED

JAN, 19 1961

JAMES R. PROWNING COMM.

In the Supreme Court of the United States

October Term, 1960

DAVID D. BECK,

Petitioner,

VS.

STATE OF WASHINGTON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

CHARLES S. BURDELL 929 Logan Building Seattle 1, Washington

JOHN J. KEOUGH
Central Building
Seattle 4, Washington
Counsel for Petitioner

Addendum to Statement of Facts

The question concerning the application of the Fourteenth Amendment of the United States Constitution to the Grand Jury proceedings, and the challenge to the proceedings on these grounds, was raised by petitioner's Motion to Dismiss (Tr. 97). This Motion was denied (Tr. 121).

The application of the Fourteenth Amendment of the United States Constitution and its application to petitioner's Motion for Continuance and Motion for Change of Venue was raised by motion (Tr. 16) and also by challenge to the jury panel (Statement 2341). These motions were denied at Transcript pages 37 and 39 and at Statement page 14.

The constitutionality of these rulings was preserved in the Supreme Court of the State of Washington (Assignment of Errors No. 29 and Petition for Reargument).

The question concerning the constitutionality under the Fourteenth Amendment of the Constitution of the United States of an affirmance of a conviction by a divided court in the State of Washington was raised in the Petition for Reargument and argument was granted upon the ground that this question involved a constitutional right (Appendix to this Petition, p. 63). The Petition was denied (Appendix to this Petition, p. 64).

The Conclusion of the Petition (p. 45) constitutes a summary of petitioner's argument.

In the Supreme Court of the United States

October Term, 1960

DAVID D. BECK,

Petitioner.

VS.

STATE OF WASHINGTON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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I—OPINIONS BELOW

The opinions of the Supreme Court of the State of Washington are reported in the official Advance Sheets of the Washington Reports at 155 Wash. Dec. 565.

A per curiam statement prefaces the opinions of individual judges. The per curiam statement reads as follows:

"One of the judges of this court disqualified himself from participating in the decision of

The opinions are not reported in the bound volumes of the Washington Reports or Pacific Reports. Extra copies of the Advance Sheet volume which contains the opinions are in the appendix.

this case. The eight remaining judges, after numerous conferences, are equally divided in their decision for the reasons appearing in the opinions filed."

"There being no majority for affirmance or reversal, the judgment of the trial court stands affirmed."

Three opinions follow the above statement. The first opinion (155 Wash. Dec. 565) represents the decision of four of the eight judges who considered the appeal. This opinion concludes with the statement:

"We find ample evidence to sustain the verdict and no prejudicial error in the record. The judgment appealed from is affirmed."

The second opinion represents the view of the four remaining judges. This opinion concludes as follows (155 Wash. Dec. 620):

"For the reasons stated herein, it is my opinion that the order of the superior court denying appellant's motion to set aside and dismiss the indictment should be reversed and the cause remanded with directions to grant the motion."

One of the latter judges also wrote a separate opinion which reads in part as follows (155 Wash. Dec. 616):

"In the instant case, it was not determined that the members of the grand jury were free from bias and prejudice. This is particularly significant in view of the atmosphere that existed towards the appellant in King County at the time the grand jury was empanelled.

"The grand jury proceedings should be vacated and set aside."

Following announcement of the above opinions, the petitioner filed a motion for a rehearing. One of the principal grounds urged in the petition was that the Constitution and laws of the State of Washington do not permit affirmance by an equally divided court of a conviction in a criminal case. The Supreme Court thereupon granted a rehearing on the grounds that the petition for rehearing raised a constitutional question which had not theretofore been considered (i.e., the question concerning the validity of affirmance by an equally divided court). Upon the rehearing, after two oral arguments, the court remained equally divided.

A second petition for a rehearing and a motion to strike was then filed upon the grounds, inter alia, that the court had not decided the constitutional question concerning the validity of an affirmance of a conviction by an equally divided court. This petition was denied and the motion to strike was stricken by an order entered on August 22, 1960. This order did not indicate any change in opinion on the part of any of the judges. The order of this date is designated in the transcript of the record in the Supreme Court as the "judgment" in the case.

No opinion or order filed by the Supreme Court

^{2.} Transcript of proceedings in the Supreme Court, entry of May 23, 1960. This order is reproduced in the Appendix to this petition, p. 63.

Transcript of proceedings in the Supreme Court, entry of May 23, 1960. App. p. 63.

Transcript of proceedings in the Supreme Court, entry of June 14, 1960. App. p. 64.

Transcript of proceedings in the Supreme Court, entry of July 13, 1960. App. p. 65.

Transcript of proceedings in the Supreme Court, entry of August 22, 1960. App. p. 65.

of the State of Washington discusses or considers the validity, under the Constitution and laws of the State of Washington, of a purported affirmance by an equally divided court of a conviction in a criminal case.

II—JURISDICTION .

The opinions of the Supreme Court of the State of Washington which are sought to be reviewed were filed on February 3, 1960 (155 Wash. Dec. 565). The judgment was entered, after rearguments, on August 22, 1960. On November 18, 1960 the court granted petition until and including January 19, 1961 as the time for filing the petition for certiorari.

The jurisdiction of this Court is invoked upon the grounds that the proceedings in the courts of the State of Washington involved denial of appellant's right to due process and equal protection of the law under the Fourteenth Amendent to the Constitution of the United States. The jurisdiction of this Court to review the judgment of the Supreme Court of the State of Washington is based upon 28 USCA 1257(3).

III—QUESTIONS PRESENTED

1. Where accusation is by a grand jury indictment, does a person (in this case a member and officer of a labor union who at the time of the grand jury proceedings was the subject of continuous, extensive and intensely prejudicial publicity) have a right under the due process and equal protection

^{7.} Transcript of proceedings in the Supreme Court, entry of August 22, 1960. App. p. 65.

clauses of the Fourteenth Amendment to have the charges and evidence considered by a grand jury which was fair and inpartial or, at least, which was instructed and directed to act fairly and impartially?

The judgment of the Supreme Court of the State of Washington holds that no person has a right to a fair and impartial grand jury.

(a) Where petitioner was a member and officer of a labor union, and where prejudicial and inflammatory charges against him were being widely and intensively disseminated by all news media, did he have a right under the due process and equal protection clauses of the Fourteenth Amendment to have the grand jury impaneled in a manner which would prevent or at least tend to prevent the selection of biased and prejudiced grand jurors?

The judgment of the Supreme Court of the State of Washington holds that neither petitioner nor any other person has this right.

(b) Was it a denial of due process and equal protection as guaranteed by the Fourteenth Amendment for the court, in the course of instructing the grand jury, to make statements of an inflammatory nature, prejudicial to petitioner, including a statement that testimony before a United States Senate Committee had disclosed that officers of the Teamsters Union (including petitioner) "...had through trick and device, embezzled or stolen hundreds of thousands of dollars of the funds of that union—money which had come to the union from the dues of its members...?"

The judgment of the Supreme Court of the

State of Washington holds that a court may properly make such statements with respect to a person under consideration by the grand jury.

(c) Were petitioner's rights under the due process and equal protection clauses of the Fourteenth Amendment violated by inflammatory statements of the prosecutors made in secret session of the grand jury, including statements of disbelief of testimony favorable to petitioner, threats of perjury charges against a witness who gave testimony favorable to petitioner, and other statements of an inflammatory nature prejudicial to petitioner?

The judgment of the Supreme Court of the State of Washington holds that such conduct is proper and does not violate the rights guaranteed by the Fourteenth Amendment.

2. Was the petitioner's right to a fair trial, as guaranteed by the due process and equal protection clauses of the Fourteenth Amendment, violated where a timely motion for a continuance was denied, although inflammatory and prejudicial statements concerning petitioner had been widely and intensively disseminated in the press and in national magazines, and through the media of radio and television, commencing prior to the indictment of petitioner and continuing until the date of trial?

The judgment of the Supreme Court of the State of Washington holds that denial of the motion under such circumstances does not violate the rights guaranteed by the Fourteenth Amendment.

3. Was the petitioner's right to a fair trial, as guaranteed by the due process clause of the Four-

teenth Amendment, violated where a seasonable application for a change of venue was denied, although inflammatory and prejudicial statements concerning petitioner had been widely and intensively disseminated in the press and in national magazines, and through the media of radio and television, commencing prior to the indictment of petitioner and continuing until the date of trial?

- The judgment of the Supreme Court of the State of Washington holds that denial of the motion under such circumstances does not violate rights guaranteed by the Fourteenth Amendment.
- 4. Were the petitioner's rights under the due process and equal protection clauses of the Fourteenth Amendment violated by a purported affirmance, by the Supreme Court of the State of Washington, of a judgment of conviction in a criminal case where the Supreme Court was equally divided. and where the Constitution of the State of Washington provides that there shall be a right of appeal in all cases, and where the Constitution and statutes of the State of Washington and the rules of the Supreme Court of that State provide that the concurrence of a majority of the judges present at the argument shall be necessary to pronounce a decision, and where, until petitioner's case, there has been no rule or practice in criminal cases permitting or resulting in decisions other than by decision of a majority of the judges?

This question was submitted to the Supreme Court of the State of Washington by timely petition for rehearing and reargument; but the Court has written no opinion with respect thereto except to deny the petition, although the Court remains evenly divided."

IV—STATUTES INVOLVED

Amendment XIV, § 1, of the Constitution of the United States provides in part as follows:

"... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 10.28.030 of the Revised Code of Washington provides that a grand juror may be challenged:

"... when, in the opinion of the court, a state of mind exists in the juror, such as would render him unable to act impartially and without prejudice."

Article IV, § 16 of the Washington State Constitution provides:

"Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law."

Section 10.28.070 of the Revised Code of Washington provides:

"The prosecuting attorney shall attend on the grand jury for the purpose of examing witnesses and giving them such advice as they may ask."

Section 10.40.070 of the Revised Code of Washington provides:

"The motion to set aside the indictment can be made by the defendant on one or more of the following grounds, and must be sustained

^{8.} Transcript of proceedings in the Supreme Court, entries of June 14, 1960 and August 22, 1960. App. p. 64.

... (4) that the grand jury were not selected, drawn, summoned, empanelled, or sworn as prescribed by law ..."

Article I, § 22 (Amendment 10) of the Washington State Constitution provides:

"In criminal prosecutions the accused shall have . . . the right to appeal in all cases;"

Article IV, §2 of the Washington State Constitution provides:

"The Supreme Court shall consist of five judges, a majority of whom shall be necessary to form a quorum and pronounce a decision.

... In the determination of causes all decisions of the court shall be given in writing and the grounds of the decision shall be stated. The legislature may increase the number of judges of the Supreme Court from time to time and may provide for separate departments of said court."

R.C.W. 2.04.070 provides:

"The Supreme Court, from and after February 26, 1909, shall consist of nine judges."

Rule 6 of Rules Peculiar to the Business of the Supreme Court provides:

"The court is divided into two departments, denominated respectively, Department One and Department Two...

"The presence of four judges shall be necessary to transact any business in either of the departments, except such as may be done at chambers, but one or more of the judges may from time to time adjourn to the same effect as if all were present, and a concurrence of four judges shall be necessary to pronounce a decision in each department."

R.C.W. 2.04.170 provides as follows:

"The Chief Justice, or any four judges, may convene the court en banc at any time, and the Chief Justice shall be the presiding judge of the court when so convened. The presence of five judges shall be necessary to transact any business, and a concurrence of five judges present at the argument shall be necessary to pronounce a decision in the court en banc: Provided that if five of the judges so present do not concur in a decision, then reargument shall be ordered and all judges qualified to sit in the cause shall hear the argument, but to render a decision a concurrence of five judges shall be necessary; and every decision of the court en banc shall be final except in cases in which no previous decision has been rendered in one of the departments, and in such cases the decision of the court en banc shall become final thirty days after its filing, unless during such period a petition for rehearing be filed. The filing of such petition within such a period shall have the effect of suspending the decision until disposed of by the concurrence of five judges; ..."

Rule 15 of the Rules Peculiar to the Business of

the Supreme Court provides:

"The Chief Justice, or any four judges, may convene court en banc at any time, and the Chief Justice shall be the presiding judge of the court when so convened. The presence of five judges shall be necessary to transact any business, and a concurrence of five judges present at the argument shall be necessary to pronounce a decision of the court en banc: Provided, that if five of the judges so present do not concur in a decision, then reargument shall be ordered and all the judges qualified to sit in the cause shall hear the argument, but to render a decision a concurrence of five judges shall be necessary; and every decision of the court

whether rendered en banc or by a department shall be final thirty days after its filing, unless during such period a petition for rehearing be filed. The filing of such petition within such period shall have the effect of suspending the decision until disposed of by the concurrence of five judges; ..."

V-STATEMENT OF THE CASE

In accordance with the practice applicable in the State of Washington, the pre-trial motions, affidavits and exhibits, as well as the trial proceedings, are included in the "Statement of Facts." References to all documents and proceedings included therein will be indicated by the abbreviation "St.". Documents contained in the transcript of the record will be referred to by the abbreviation "Tr."

On July 12, 1957, petitioner was indicted by a Grand Jury in the County of King, State of Washington, for larceny of \$1900.00. This sum was alleged to have been the proceeds of the sale of an automobile which was the property of an association of labor unions known as the Western Conference of Teamsters (Tr. 1).

The Grand Jury which returned the indictment was convened on May 20, 1957 (St. 1704). Prior thereto, on or about February 26, 1957, an United States Senate Committee (commonly known as the "McClellan Committee") had commenced an investigation of certain labor unions and labor union officials. Most of the hearings of the Committee

^{9.} The hearings are contained in several volumes entitled HEARINGS BEFORE THE SELECT COMMITTEE ON IMPROPER ACTIVITIES IN THE LABOR OR MANAGE-MENT FIELD, printed by the United States Government Printing office. The printed reports of the proceedings of the Committee will be referred to herein as "Hearings", and the volume and page number will be designated.

were conducted in public and were extensively reported by all forms of news media (St. 2126). During the hearings, petitioner was repeatedly charged by members of the Committee with crimes and other misconduct. The Seattle area (which comprises King County) was a focal point for the dis-semination of publicity concerning these charges and other publicity of a highly derogatory and accusatory nature. The so-called disclosures and "findings" which were made during these hearings were featured in both of the newspapers published in Seattle: and sensational characterizations of the testimony and comments of members of the Committee were flamboyantly displayed in large type, frequently in banner headlines (St. 1968; App. 72). The two Seattle newspapers together have a circulation of approximately 313,000; and in addition to the normal circulation, copies of these newspapers are regularly displayed throughout Seattle in a prominent manner so that the general public may observe and read the large type headlines. During the hearings, it was observed that many persons paused to read the accusatory headlines concerning the petitioner and were heard to make remarks indicating that they accepted such accusations and reports as being true (St. 1968).

Proceedings of the Committee were also televised and broadcast direct and "live"; and the more sensational comments or testimony concerning petitioner were reported on the daily (and sometimes hourly) radio and television newscasts.

Similar reports were contained in magazines having national circulation, including TIME, LIFE, LOOK, NEWSWEEK, and U. S. NEWS AND WORLD REPORT (St. 1969; App. 96-105).

In addition thereto, there was published, within a week prior to the return of the indictment, an article in the July 6, 1957 issue of SATURDAY EVENING POST, entitled "The Unknown Sleuth Who Trapped Dave Beck" (St. 2055). This article likewise contained accusatory and derogatory statements concerning petitioner (St. 2056-2059).

On March 26th and 27th, 1957, and on May 8, 1957, petitioner appeared as a witness before the Committee. On both occasions he promptly informed the Committee that, upon advice of his counsel, he would assert the privilege against self-incrimination with respect to the matters which were the subject of the investigation. Nevertheless, the Committee repeatedly posed questions to petitioner which petitioner refused to answer, asserting in each instance his privilege against self-incrimination. The Committee permitted this interrogation to be televised and broadcast by television and radio networks throughout the United States; and these broadcasts and telecasts were heard and observed by large portions of the population in King County (St. 2130). A Seattle television station advertised and announced that it would carry a "live" report of the proceedings on the second day of petitioner's appearance, and the announcement indicated that the station would devote approximately 9 and 3/4 hours of its telecasts for that day to reproductions of the hearings and to news comments relating thereto (St. 1986).

During petitioner's appearances before the Committee, petitioner was severely criticized by members of the committee for invoking the Fifth Amendment and his right to do so was challenged (St. 2133). Some members of the Committee ac-

tually asserted during the public hearings that the claim of privilege under the Fifth Amendment constituted an admission of guilt (Vol. 5, Hearings,-p. 1537, 1548)."

The purpose of the Senate Committee with respect to petitioner was demonstrated at the time of petitioner's appearance on March 27, 1957. The Chairman then stated (Hearings, Vol. V, p. 1678):

"We have a witness here that is refusing to answer, and who is hiding behind the Fifth Amendment. The only reason I have continued is to let the country know, let the Teamsters of this country know, the character of transactions that have transpired, about which this witness is unwilling to make disclosures under oath. For that reason, I have indulged the interrogation to this point."

Announcement of the proposed impanelment of a Grand Jury to investigate petitioner was made on April 26, 1957. On May 3, 1957, it was reported that the Prosecuting Attorney had designated a former Mayor of Seattle and a vice-president of the Seattle Bar Association to act as special Prosecutors in the conduct of the Grand Jury proceedings (St. 2005, 2006). This article contained the following statement:

"The Grand Jury is to investigate possible misuse of Teamsters Union funds by international president Dave Beck . . ."

The Grand Jury was impanelled on May 20, 1957. Between sessions, all of the aforesaid news media were available to the Grand Jurors. During the

Neither the Committee Counsel nor the Committee Chairman corrected these inaccurate assertions. Compare the decision of this Court in Grunewald v. U. S. 353 U. S. 391, 421.

month of April, and continuing until the return of the indictment on July 12, 1957, reports were circulated by news media with the degree of intensity described above, charging that petitioner;

had illegally obtained profits from a widow's trust fund;

was possibly connected with mail fraud;

had misused his Union position in 52 instances (including instances of misappropriation of funds);

had invoked the Fifth Amendment 60 times;

had stolen \$300,000.00 from the Union, and "took" \$300,000.00 from the Union;

had been guilty of "rascality";

had committed "many criminal actions";

had used Union funds for the payment of personal bills;

had been indicted by a Federal grand jury for tax evasion.

Most of these reports attributed the charges to the Chairman of the aforesaid Senate Committee (St. 1977-2112; 2122-2124; 2217-2248; 2278-2339; 2347-2359).

The above references are but illustrative of the many prejudicial reports concerning petitioner. It would be impractical to include all such reports in the record to this court. Additional illustrations are contained in the Appendix hereto.

The opinion of Robert F. Kennedy, Chief Counsel for the Committee, concerning the probable effect of the hearings upon the reputation of petitioner is demonstrated in Mr. Kennedy's book "THE EN- EMY WITHIN." At page 29 Mr. Kennedy states that when petitioner appeared before the Committee:

"... I looked at him, and realized that here was a major public figure about to be utterly and completely destroyed before our eyes. I knew the evidence we had uncovered would be overwhelming. It would make him an object of disgust and ridicule. I knew from what we had and from my conference with him in New York that he would have no choice but to plead the Fifth Amendment against self-incrimination. It was no contest now. He couldn't or wouldn't fight back."

And at page 35, Mr. Kennedy states that at the time of petitioner's appearance before the Committee on May 16, 1957:

"He was a different man from the Dave Beck I had seen at the Waldorf on January 5, or before the Committee on March 26. Now he was dead, although still standing. All that was needed was someone to push him over and make him lie down as dead men should."

The effect of the publicity relating to petitioner is shown by the nature of the news reports. On March 29, 1957 the Seattle Post-Intelligencer reported that Beck was hanged and burned in effigy in Yakima, Washington (St. 1992), and the April 8, 1957 issue of TIME Magazine reproduced a picture of this incident (St. 1995). On April 12, 1957 U.S. NEWS & WORLD REPORT reported that petitioner's standing in Seattle had been "badly hurt" in an article entitled "How Dave Beck Rates Now in His Home Town" (St. 2001). On May 27, 1957 TIME Magazine published an article under the

^{11.} Harper & Brothers, Copyright 1960, Robert F. Kennedy.

caption "A City Ashamed" (St. 2043; App. 103). Both Seattle newspapers on May 18, 1957 prominently reported a derogatory criticism of petitioner by the Episcopal Bishop of the Diocese of Olympia (St. 2030-2031).

One of the judges of the Supreme Court of the State of Washington stated that (155 Wash. Dec. 601, 602):

"The amount, intensity, and derogatory nature of the publicity received by [petitioner] during this period is without precedent in the State of Washington.

"The natural effect of this publicity was that, in the eyes of the average citizen, the character of appellant had been thoroughly discredited in the Seattle area on or before May 20, 1957.

"In view of the circumstances shown by the undisputed facts stated in the affidavits in this case, I think it would be unrealistic to believe that a very substantial number of the citizens of the community had not adopted, consciously or unconsciously, an attitude of bias and prejudice toward appellant at the time the grand jury was convened. If ever there was a case which required the most stringent observance of every safeguard known to the law to protect a citizen against bias and prejudice, this was it."

It was against this background that the grand jury was convened.

In selecting the grand jurors, no prospective member was asked whether he had read anything about the alleged misconduct of petitioner as reported in connection with the hearings of the Senate Committee or as elsewhere reported. No juror was asked if he had heard on the radio or seen on television any part of the Senate Committee hearings. There was no interrogation of the jurors to ascertain whether any of them had heard or participated in any discussions concerning such matters.

In one of the opinions of the Supreme Court of the State of Washington, it was stated (155 Wash. Dec. 605):

"In view of the unprecedented publicity which had been given to the Senate Committee hearings within the three months preceding the impanelment of the grand jury, I think that the jurors should have been interrogated for the existence of possible bias and prejudice against the officers of the teamsters' union."

After the grand jury was selected and the impanelment completed, the court explained and commented on the fact that the institution had been used so infrequently in the State of Washington that most people, even lawyers, were unfamiliar with its procedure and purposes (St. 2172). The court then addressed the grand jury as follows (St. 2175-2176):

"We come now to the purpose of this grand jury and the reasons which the judges of this court thought sufficient to justify the expense to the county, and the inconvenience to and sacrifice by you, which this grand jury session will require.

"It seems unnecessary to review the recent testimony before a Senate Investigating Committee except to say that disclosures have been made indicating that officers of the Teamsters union have, through trick and device, embezzled or stolen hundreds of thousands of dollars of the funds of that union—money which had come to the union from the dues of its members. It has been alleged that many of these transactions, through which the money was siphoned out of the union treasury, occurred in King County. Such crimes, if committed, cannot be punished under Federal law, or under any law other than that of the State of Washington, and prosecution must take place in King County. The necessary criminal charges can only be brought in this county upon indictment by the grand jury or information filed by the prosecuting attorney.

"The president of the Teamsters Union has publicly declared that the money he received from the union was a loan which he has repaid. This presents a question of fact, the truth of which is for you to ascertain."

"To completely investigate all of these items may be beyond the energy and endurance of yourselves, the prosecutors and investigating staff. The financial burden of such a complete investigation may be beyond the resources of King County. I urge you to do all that you can within practical limitations to ascertain the truth or falsity of these charges."

The court failed to instruct the grand jury to disregard the then current hostile publicity directed toward petitioner, nor was the grand jury admonished to consider the evidence presented to it in a fair and impartial manner and without bias or prejudice toward petitioner. But on the very afternoon of the day that the grand jury was selected and sworn, the following articles appeared in THE SEATTLE TIMES (St. 2035, 2438);

"BECK OUSTED FROM A.F.L.-C.I.O. POSTS
—TEAMSTER CHIEF FOUND GUILTY OF
'VIOLATING TRUST.'"

"SOLON DENIES INFRINGING BECK'S RIGHTS."

"May I say that the committee has not convicted Mr. Beck of any crime, although it is my belief that he has committed many criminal offenses."

And on the following morning, the SEATTLE POST-INTELLIGENCER displayed the following banner headline:

"McCLELLAN LAYS 'MANY CRIMINAL' ACTS TO BECK."

Prior to the trial appellant moved for right to inspect the grand jury proceedings, contending among other things that the attorneys who appeared before the grand jury had engaged in misconduct. This motion was denied (Tr. 121). The court, however, caused the testimony of two witnesses to be sealed and included in the record and after the trial, the testimony of these two witnesses was made available to appellant.

Excerpts from the testimony of one of these witnesses is contained in the opinions of the Supreme Court of the State of Washington at 155 Wash. Dec. 620.

One of these witnesses was a bookkeeper in the employ of the Teamsters Union. He testified before the grand jury that petitioner had delivered to him certain funds for deposit in the safe deposit box at the Teamsters building. The witness testi-

fied that petitioner mentioned something about automobiles and directed him to hold the money until such time as it was possible to determine how the money was to be allocated (St. 1798-1799, 1858). The witness also testified that he was the only person who had a key to this safe deposit box (St. 1802-1803). The witness further testified that over a period of time petitioner had delivered between \$5,000 and \$6,000 to him in envelopes for deposit in the box. Some of the envelopes had the words "Western Conference" written on them (St. 1805).

During a recess in his interrogation, the witness, at the request of the grand jury (accompanied by one of the special prosecuting attorneys), went to the Teamsters building and returned with two envelopes (St. 1811). Upon one of the envelopes was written the words "Western Conference or J. C." The initials "J. C." refer to the Joint Council of Teamsters (St. 1811). These words were written in the handwriting of petitioner (St. 1812).

Immediately upon the delivery of these envelopes, which he had obtained at the request of the grand jury and in the company of one of the prosecuting attorneys and without prior notice, the witness was subjected to that portion of the grand jury testimony commencing at page 106 of the Appendix.

Excerpts from the testimony of a second witness who testified to facts favorable to petitioner are also contained in the Appendix, commencing at page 110.

These excerpts from the testimony before the grand jury demonstrate such surprising and unus-

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ual conduct on the part of a prosecutor in grand jury proceedings that we respectfully request they be examined.

A motion to dismiss the indictment because of the method used in the selection and impanelment of the grand jury, the instructions and comments addressed to the grand jury by the Court, and the conduct of the Prosecuting Attorneys in the secret grand jury sessions, was denied (Tr. 97 St. 2430-2258). The motion was based upon Section 10.40.070 of the Revised Code of Washington (supra p. 8). In denying this motion, the Court observed that the witnesses before the grand jury had not changed their testimony because of the threats and comments of the Prosecuting Attorneys; but the Court apparently did not consider the probable effect of such conduct upon the grand jurors in their consideration of the credibility of the witnesses (St. 2526, 2530, 2210).

Prejudicial Publicity Relating to Petitioner Subsequent to Return of the Indictment

Continuously from the date of the indictment until the date of trial, publicity of the nature heretofore described, relating specifically to petitioner and to officers of the Teamsters Union, including petitioner's son and other persons known to be his associates, was disseminated throughout King County (St. 1967-2124, 2217-2248, 2278-2340; App. 96-110). This publicity included flamboyant and sensational accounts of the trial of petitioner's son, who was charged and convicted of an offense similar to the charge against petitioner (St. 2337-2340; App. 105). The trial of petitioner's son lasted approximately ten days and was concluded approxi-

mately ten days prior to the commencement of the trial of petitioner, St. 2337, 1). The jurors in petitioner's case were selected from the same panel from which the jurors in the case against petitioner's son were selected (St. 2266-2361).

Motions for Continuance and Change of Venue

After the return of the indictment on June 12, 1957, petitioner made repeated motions for a continuance of the trial date on the grounds that the inflamatory publicity concerning petitioner and members of his union had created an atmosphere in which it was impossible for petitioner to obtain a fair trial (Tr. 16, 123, 128, St. 1-15). A motion for a change of venue was made on the same grounds (Tr. 29). These motions were supported by extensive affidavits describing the nature (and intensity of the then current publicity; and it was averred, without denial, that counsel for petitioner had discussed the matter with approximately fifty attorneys in the Seattle area, all of whom expressed the opinion that it would be impossible for petitioner to obtain a fair trial under such circumstances (St. 1951-1966, 2214-2216, 2250-2276). Except for a short continuance for the convenience of counse! (St. 2272), all such motions were denied and petitioner's trial commenced on December 2, 1957 (St. 15).

VI—THE TRIAL

The trial in this case commenced on December 2, 1957. The State introduced evidence showing that a certain automobile owned by the Western Conference of Teamsters had been used from time to time

by petitioner and other officers of the Teamsters Union (St. 438-443, 472); that in January 1956 the automobile was left at a Seattle garage for the purpose of being sold; that a certain Martin Duffy determined to purchase the car (St. 444-474); that Duffy assumed that the automobile belonged to petitioner, although no one told him so, and because of this assumption made his check for the purchase price (\$1900.00) payable to petitioner (St. 488-490); that Duffy delivered the check to petitioner's secretary (St. 481); that petitioner's secretary made a telephone call to someone in the Teamster's building and that a bookkeeper then came to petitioner's office and delivered an envelope containing the certificate of title to petitioner's secretary, who in turn delivered the envelope to Duffy (St. 475-497); that the sale transaction in no way involved any negotiation between Duffy and petitioner and that petitioner was in fact out of the city at the time of the negotiations for the sale of the automobile and receipt of the funds (St. 488-490); that petitioner's secretary, without instructions from petitioner, deposited the check to petitioner's personal account because of the fact that it was made payable to petitioner (St. 1020).

One of the prosecutors who assisted in the conduct of the Grand Jury was called as a witness for the State. He testified that petitioner had appeared before the Grand Jury and had there testified that upon his return to Seattle and upon learning of the transaction he repaid the union (St. 639-640). This testimony was corroborated in the Grand Jury proceedings by a bookkeeper of the Teamsters Union whose testimony was made available to petitioner after the trial (St. 1797-1944). This witness was

not called by petitioner at the trial because petitioner had been advised that he had been subjected to misconduct in the Grand Jury room and petitioner's counsel were uncertain as to the effect of such misconduct on the testimony of the witness; and in addition thereto, in the course of the trial of petitioner's son the prosecutor had asserted in open court that this witness was evading service of a subpoena (which was never shown to be a fact) and that he, the prosecutor, would not vouch for the credibility of the witness (St. 2304-2307). These charges by the prosecutor were reported prominently in the press (St. 2304-2307, 2314).

Petitioner introduced evidence showing that there was maintained at the Teamsters building a safe deposit box and that prior to the indictment of petitioner the box contained a large amount of currency (St. 590, 1064-1066). Petitioner also introduced evidence showing that petitioner frequently made contributions to political candidates in currency (St. 590, 592); and in the final argument, petitioner's counsel argued that petitioner, upon returning to Seattle and learning of the mistaken deposit of funds to his account, had returned this sum in currency for the deposit in the safe deposit box and subsequent use for contributions to political campaigns. Petitioner testified in his defense, but gave no testimony concerning receipt of the \$1900 or the subsequent disposition thereof (St. 1083-1118)."

The principal evidence relied upon by the State to prove the element of knowledge and intent con-

^{12.} If petitioner had contributed to a candidate for a national elective office he would have been guilty of a violation of 18 USC § 610.

sisted of the preliminary work sheets of a certified public accountant employed by petitioner to prepare his income tax returns. These work sheets contained an entry which showed a receipt of \$1900 from a "Beck-Callahan" [Cadillac?] transaction. The identifying witness testified that the entry resulted from mis-reading the handwriting on the original ledger sheet (St. 753, 754). (St. 674, 701; Ex. 17, Ex. 18). It was definitely shown that these exhibits were not business records nor had the accountant discussed them with or shown them to petitioner or received any instructions whatsoever from petitioner concerning their preparations (St. 660-664, 667, 732, 734, 736, 964, 965, 1110). These documents were prepared by the accountant by reference to a receipt and disbursement ledger maintained by petitioner's secretary (St. 735, 753, 754; Ex. 22). The latter document which the accountant identified as the instrument from which he compiled the work sheet (St. 735), contained an entry correctly showing the \$1,900.00 to have been a receipt relating to an automobile transaction. Petitioner had not seen the latter document and had given his secretary no instructions with reference to its preparation (St. 964, 965, 1110). Neither preparation of these documents nor knowledge of their contents were in any way attributed to petitioner. The trial court, nevertheless, admitted Exhibits 17 and 18 in evidence and the State relied strongly on the erroneous entry, contending that it was proof of petitioner's knowledge and intent, even though the entries had been made by the accountant without the knowledge of petitioner (St. 701, 1317-1319). The theory upon which the State offered and the trial court admitted these docu-

ments was never clear (St. 1444). The Supreme Court of the State of Washington held that their admission did not constitute error, apparently upon the theory that it could be assumed that both the accountant and petitioner's secretary testified falsely, and that such testimony warranted the inference that affirmative authentication of the documents and petitioner's knowledge and responsibility therefor could be drawn (155 Wash. Dec. 584). The opinion of the Supreme Court of the State of Washington on this point does not accurately summarize the testimony which was claimed to constitute the purported authentication of these documents (St. 660-666, 753, 754). Actually, all of the testimony negated any knowledge on the part of petitioner concerning the preparation of these documents. The admissibility of the documents is reminiscent of the proceedings in the trial which is described in Lewis Carroll's ALICE IN WONDER-LAND, Chapter XII (App. 112).

The jury returned a verdict of conviction after a trial lasting approximately two weeks (St. 1-1347).

VII—APPELLATE PROCEEDINGS

In accordance with the rules applicable in the State of Washington the conviction of petitioner was appealed to the Supreme Court of that state. The case was first argued in March, 1959, and the first opinions of that court were filed in February of the following year (155 Wash. Dec. 565). Eight judges considered the appeal and were equally divided in their decision; the court nevertheless filed a per curiam statement purporting to affirm the conviction. This purported affirmance was in direct

violation of the Constitution and statutes of the State of Washington, and the rules of the Supreme Court of the State of Washington, which provide that the concurrence of a majority of the judges shall be necessary to pronounce a decision. The applicable constitutional and statutory provisions, and the applicable court rules, are set forth hereinabove at pages 8 and 9.

Upon petitions for rehearing and reargument the members of the Supreme Court remained equally divided in their respective opinions on the merits, but a majority of those sitting apparently voted to affirm the conviction despite the lack of a constitutional majority for either party (App. 64).

Prior to one of the rearguments one of the judges who heard the case (and who voted for affirmance) is reported to have stated in a press conference that the case had political implications because of the fact that three of the judges were candidates for re-election in the November 1960 election (Seattle Post-Intelligencer, June 14, 1960).

All constitutional issues raised in this petition were raised at the trial and upon appeal; and in his petition for reargument and rehearing petitioner raised the question of the constitutionality of the purported affirmance of the conviction by a divided court.

VIII—ARGUMENT

A. Appellant's Right to an Impartial and Unbiased Grand Jury

This Court has repeatedly been called upon to consider the accusatory processes employed in state actions and to determine whether grand jury pro-

ceedings and other methods of accusation meet those standards of fairness which are required by the due process and equal protection clauses of the Fourteenth Amendment-to the Constitution of the United States.

Cassell v. Texas, 339 U.S. 282; Hernandez v. Texas, 347 U.S. 475; State v. Pierre, 306 U.S. 354; Re William Oliver, 333 U.S. 257.

In considering cases of this nature this Court has invariably expressed the view that grand jurors must be fair and impartial, and that the use of methods of selecting grand jurors which result or might result in a biased or prejudiced grand jury requires a dismissal of the indictment. The decisions of the Court on this point have been based upon both the due process of law and equal protection clauses of the Fourteenth Amendment. Annotation, 94 L.Ed. 856, at 857.

Thus, in Cassell v. Texas, 339 U.S. 282, this Court reversed a conviction because of discrimination in the selection of the grand jury. The opinion in that case commenced as follows (339 U.S. 282-283):

"Review was sought in this case to determine whether there had been a violation by Texas of petitioner's federal constitutional right to a fair and impartial Grand Jury."

Similarly, in State v. Pierre, 306 U.S. 354, this Court held that the standards of impartiality requisite to service as a trial juror were likewise applicable to Grand Jurors.

The Court has expressed the same philosophy by declaring that the Grand Jury is the institution

which stands between the citizen and the prosecutor. Hoffman v. United States, 341 U.S. 479.

The following decisions likewise firmly demonstrate that at common law, as well as under the applicable constitutional provision, Grand Juries must be selected in a manner which will conform to fundamental standards of fairness and result, insofar as possible, in an institution which will act fairly and impartially.

Field's Charge, 30 Fed. Cas. 992, No. 18255 (Cir. Ct. Cal. 1872);

I Wharton on Criminal Law, (7th Ed. 1874) pp. 355, 366, \$452;

United States v. Wells, (D.C. Idaho 1908) 163 Fed. 313;

In the case now before the Court petitioner was entitled to a fair and impartial Grand Jury by virtue of the due process clause as well as the equal protection clause. In *Hernandez v. Texas*, 347 U.S. 475, involving an indictment of a person of Mexican descent, this Court stated (347 U.S. 478):

"... community prejudices are not static and from time to time other differences from the community norm may define other groups which need the same protection. Whether such a group exists within a community is a statement of fact."

In this case the record conclusively establishes that members and officers of the Teamsters Union constituted a class which required the protection of the equal protection clause of the Fourteenth Amendment. Indeed, the court which impaneled the

grand jury referred collectively to the "officers" of the Teamsters Union in his charge (ST 1730).

Until the case against petitioner, there could have been no doubt that the statutes and decisions of Washington required that grand juries must be fair and impartial. Section 10.28.030 of the Revised Code of Washington provides that at the time of impanelment a grand juror may be challenged:

". . . when, in the opinion of the Court, a state of mind exists in the juror, such as would render same unable to act impartially and without prejudice."

The petitioner herein, not having been held to answer at the time of impanelment, was unable to exercise his right under the aforesaid statute.

In State ex rel Murphy v. Superior Court, 82 Wash. 284, 144 Pac. 32, the Supreme Court of the State of Washington held that it was proper for a judge to excuse certain prospective grand jurors, and in so doing, declared:

"That it was the policy of the legislature to preserve the right to have an unbiased and unprejudiced jury and grand jury, and that no suspicion should attach to the manner of its selection in all cases, cannot be questioned."

In the later decision of State v. Guthrie, 185 Wash. 464, 56 P-2d 160, the Supreme Court of the State of Washington held that a motion to quash an indictment was properly denied, but in so doing, the Court cited the Murphy case, supra, with approval and

^{13.} In fact, in its brief on appeal, the State conceded that grand juries must be fair and impartial. Four judges of the Supreme Court of the State of Washington did not agree with the State on this point.

discussed Section 10.28.030 of the Revised Code of Washington as follows:

"While this section may be said to relate to challenges made by interested persons, it is not to be construed as denying to the court the right, upon its own motion, to excuse a juror deemed to be disqualified or incompetent. To deny this right would be out of harmony with the policy of the law, which charges the court with the responsibility of insuring that qualified and impartial grand jurors are secured."

In states which have statutory provisions similar to the applicable statutes in the State of Washington, it is held that the institution of the grand jury must be one which acts fairly and impartially. Illustrative cases are:

State v. Johnson (N.D., 1927), 214 N.W. 39;

Maley v. District Court (Iowa, 1936), 266 N.W. 815;

Burns International Detective Agency V. Doyle (Nev., 1922), 208 Pac. 427.

In petitioner's case, the trial court not only failed to adopt methods of impanelment which would insure the selection of fair and impartial grand jurors, but also, in its instructions to the grand jury, made specific references to the "disclosures" made by the Senate Committee indicating that:

"officers of the Teamster's Union have, through trick and device, embezzled or stolen hundreds of thousands of dollars of the funds of that Union—money which had come to the Union from the dues of its members . . ." (St. 1730, 1731). The Court also advised the jury that petitioner had "publicly declared that the money received from the Union was a loan which he has repaid. This presents a question of fact, the truth of which is for you to acsertain." (St. 1730, 1731).

The latter statement was inaccurate and presented to the grand jury a wholly improper issue of fact. Petitioner never contended publicly, nor in his grand jury testimony, nor at the trial, that the \$1,900.00 which he was charged to have stolen was a loan.

Such instructions and comments to the grand jury specifically violated the mandate of Article IV, \$16 of the Washington State Constitution, which provides (supra, p. 8)

"Judges shall not charge juries with respect to matters of fact; nor comment thereon, but shall declare the law."

Similarly, the above instructions, together with the Court's references to the expense to be incurred by the County in conducting the grand jury and by the sacrifice by the grand jurors was in violent disregard of the declarations of the Supreme Court of the State of Washington in State v. Guthrie, 185 Wash. 464, 56 P. 2d 160, to the effect that the policy of the law:

"... charges the court with the responsibility of insuring that qualified and impartial grand jurors are secured."

Further, it has been the uniform rule that it is error for a court in the impanelment of a grand jury to denounce particular individuals or direct the attention of a grand jury to any named person. The following authorities are illustrative:

Fuller v. State (Miss., 1905), 37 So. 749, 750; Blake v. State (Okla., 1932), 14 P 2nd 240; Clair v. State (Neb., 1894), 159 N.W. 118; State v. Will (Iowa, 1896), 65 N.W. 1010.

In petitioner's case, grand jury witnesses who testified to facts favorable to petitioner were threatened with perjury; and the prosecutors, in the presence of the grand jurors, expressed disbelief in their testimony. This constituted grave misconduct. It was for the jurors, not the prosecutors, to determine the credibility of the witnesses. It is improper for a prosecuting attorney, in the course of grand jury proceedings, to threaten witnesses or to argue issues of evidence. On the contrary, the secrecy which surrounds grand jury proceedings demands that a prosecutor act with the utmost fairness. The prosecutor's duty is simply to present to the grand jury facts sufficient to convince them that there is probable cause for a trial upon the merits. There is no cross-examination of witnesses. The accused has no right to appear. Hearsay evidence is admissible against the accused. Thus, the prosecutor's burden is slight. If in secrecy the prosecutor may threaten witnesses with prosecution and testify as to his own knowledge (when he would be rebuked for such conduct in open court), then grand juries are the vehicle of state oppression rather than protection for the citizen. Whatever excuse there may be for misconduct in a courtroom, there is none in the secrecy of the grand jury room. No person can be safeguarded against the possibility of unfounded accusations where, as here, the prosecuting attorney argues to the grand jury that witnesses who testify to facts favorable to the prospective defendant are committing perjury. Such conduct most

seriously violates the fundamental standards of fairness which have been defined by this Court. This is particularly true of the statement by the prosecutors that "no person in this room" believed the testimony of the witness. The fact is that many of the jurors, in the absence of such comment, might have believed the testimony of the witness, but were persuaded not to do so by the fact that the prosecuting attorneys did not choose to believe this testimony. The prosecuting attorneys, however, were not the persons whose function it was to determine the truth or falsity of the testimony. That function belonged exclusively to the grand jury.

One of the most thorough analyses of the duties of a prosecutor in the conduct of the grand jury proceedings is contained in the cases of U. S. v. Wells, (D.C. Idaho 1908) 163 Fed. 313. In that case the court dismissed an indictment because:

"... a commendable zeal which gathered force as it progressed, finally expanded into an exaggerated partisanship wholly inconsistent with the semi-judicial duties of a public prosecutor, and entirely unnecessary to the execution of the power imposed." (p. 329)

In defining the power of the prosecutor before the grand jury, the court declared (p. 327):

"... the provision that the prosecuting attorney may at all times appear before the grand jury for the purpose of giving information or advice relative to a matter cognizable by them, was meant to confine him to those traditional duties of giving advice concerning procedure and the like, to the examination of witnesses, as expressly provided and not to the expression of opinions or the making of arguments."

To the same effect are the following authorities: 4 Wharton's Criminal Law and Procedure (1957) \$1716, p. 480;

Attorney General v. Pelletier, (Mass., 1922) 134 N.E. 407;

State v. Crowder, (N.C. 1927) 136 S.E. 337;

People v. Bennin, (1946) 61 N.Y.S. 2nd 692.

In this State, commendable zeal does not permit a prosecutor to step beyond reasonable bounds of propriety in the open court room. Intemperate conduct there, even subject to adversary check and instructions of the trial judge, can and has resulted in reversals of convictions. State v. Case, 49 Wn. 2d 66, 298 P. 2d 500. The prosecutor is no less a State officer when he enters the secrecy of the grand jury room.

The present record compels the conclusion that actual prejudice infected the grand jury proceedings, or, at the very least, that the situation was so charged with "potential prejudice" that reversal is required. Compare Hudson v. North Carolina, 363 U.S. 697. Further, this court has consistently held that the state's available alternative of accusing by information is no answer to a proceeding to set aside a defective indictment; if the state elects to proceed by grand jury, it must do so in a constitutional manner. See Eubanks v. Louisiana, 356 U.S. 584.

B. The Denial of Petitioner's Motions for Continuance and Change of Venue

As indicated above, the Senate Committee hearings directly resulted in a series of events which

kept the Committee's charges firmly fixed in the public attention continuously from the spring of 1957 until the time of trial in December, 1957. Following the indictment of petitioner in July, the Committee resumed its public and highly publicized hearings in October, continuing to attack and vilify both petitioner and other officials of the Teamsters Union with whom his name was intimately connected in the public mind. In August he was indicted by a federal grand jury on several counts of tax fraud concerning the same transactions which had been the subject of the Committee proceedings in March and May. In November his son stood trial in Seattle on two counts of grand larceny. The subject matter of that trial, like the present case, concerned the sale of union-owned automobiles. Petitioner's appearance as a witness in his son's behalf provoked further sensational publicity. The conviction of the younger Beck was heralded in the local newspaper with headlines such as "Dave Beck, Jr., Guilty as Thief." The trial of petitioner himself followed a few days later.

It is beyond dispute that the Senate Committee's "exposure" of petitioner and insistence upon forcing him repeatedly to invoke the privilege against self-incrimination before a nation-wide television audience, followed by the indictment in the instant case, the indictment in the tax fraud case, the resumption of the Committee hearings, and the trial of petitioner's son, together comprised the foremost public event in Seattle and the State of Washington in the year 1957. The attendant publicity was at all times intensive and inflammatory. The inevitable result was to infect the entire body of prospective petit jurors with bias and prejudice, whether con-

scious or subconscious, against the petitioner. Under these circumstances, due process and equal protection required the granting to the defendant a change of venue or a reasonable continuance until the public furor against him could have some chance to abate.

It is no answer to this contention to claim that the jurors were bound by their oath to decide the case solely on the evidence. This Court has long recognized that jurors being human, cannot realistically be counted upon to overcome the effects of prejudicial matter which has been transmitted to them extra-judicially. As Mr. Justice Jackson pointed out, concurring in Krulewitch v. United States, 336 U.S. 440, 453:

"The naive assumption that prejudicial effects can be overcome by instructions to the jury.
... all practicing lawyers know to be an unmitigated fiction ..."

Mr. Justice Frankfurter has similarly remarked in Pennekamp v. Florida, 328 U.S. 331, 357:

"... No judge fit to be one is likely to be influenced consciously except by what he sees and hears in court and by what is judicially appropriate for his deliberations. However, judges are also human, and we know better that did our forbearers how powerful is the pull of the unconscious and how treacherous the rational process . . ."

Therefore, the rule is that a constitutionally fair and impartial trial cannot be had where there is a highly inflamed public mind. Moore v. Dempsey, 261 U.S. 86.

Here, however, the facts are far more aggravated than in the ordinary case of public prejudice. The

panelists from among whom petitioner was obliged to accept a trial jury had been inflamed aginst him not through the private enterprise of the press, but rather through the deliberate (and constitutionally dubious) efforts of a committee of the United States Senate. An examination of the record herein clearly reveals that all of the hostile publicity concerning petitioner stemmed, directly or indirectly, from the McClellan Committee's activities in denouncing him. The case thus falls within the category of those in which courts have condemned the extra-judicial transmission to the public, by an agency of government, of purported information and accusations concerning a prospective criminal defendant. In such a context the published remarks of the prosecutor may constitute a breach of due process. Shepherd v. Florida, 341 U.S. 50. Still closer to the instant situation was that involved in Delaney v. United States (1 Cir.) 199 F. (2d) 107, where a congressional committee insisted upon holding public hearings concerning one whom they knew to be a prospective criminal defendant. The Court of Appeals ruled that the trial court had denied the defendant due process in refusing him a continuance until the effects of the adverse publicity could have a chance to abate, and stated:

"It is fair to say that, so far as the modern media of communication could accomplish it, the character of Delaney was pretty thoroughly blackened and discredited as the day approached for his judicial trial on narrowly specified charges...

"No doubt the district judge conscientiously did all he could, both in questions he addressed to the jurors at the time of their selection and in cautionary remarks in his charge to the

jury, to minimize the effect of this damaging publicity, and to assure that defendant's guilt or innocence would be determined solely on the basis of the evidence produced at the trial. But . . . one cannot assume that the average juror is so endowed with a sense of detachment or is so clear in his introspective perception of his own mental processes, that he may confidently exclude even the unconscious influence of his preconceptions as to probable guilt, engendered by a pervasive pre-trial publicity . . ."

The identical result is reached where the pre-trial publicity is prompted by the activities of a state crime commission. United States v. Florio, 13 F.R.D. 296. Compare also Basiliko v. State (Md. 1957), 129 A. (2d) 375. The Supreme Court of the State of Washington itself has earlier recognized the inability of jurors to serve impartially amid an atmosphere of public hostility. State v. Riley, 36 Wash. 441, 78 Pac. 1001.

The same considerations apply to petitioner's application for a change of venue. In the instant case the Supreme Court of the State of Washington summarily abandoned its prior rule that when an uncontroverted affidavit of local prejudice is filed (St. 1968-1976, 2114) a change of venue is required. See State v. Hillman, 42 Wash. 615, 85 Pac. 63.

Of course, it is not merely the defendant, but the judicial system itself, which suffers when excessive publicity precludes a fair trial. The only practical remedy is the granting of changes of venue, continuances, or new trials. See Mr. Justice Douglas, The Public Trial and the Free Press, 46 A.B.A.J. 840 (August 1960).

It is not contended that the public hostility against petitioner would necessarily have disap-

peared entirely within a matter of weeks. The crux of the matter, rather is that petitioner was entitled under the Fourteenth Amendment to a reasonble postponement or transfer of his trial to a time or place at which the effects of the massive, government-engendered publicity against him would have had a fair chance to diminish. The granting of his timely requests for such relief would in no way have injured the State's case; their refusal forced him to trial in a hopelessly biased atmosphere and effectively deprived him of due process of law.

C. The Purported Affirmance of Appellant's Conviction by an Equally Divided Court

Article I, \$22 (Amendment 10) of the Constitution of the State of Washington provides:

"In criminal prosecutions the accused shall have ... the right to appeal in all cases; ..."

Thus, in Washington, a criminal defendant is afforded the constitutional right to have his case heard and determined by the Supreme Court, which is the sole appellate court in the State.

*Article IV. \$2 of the State Constitution provides:

"The Supreme Court shall consist of five judges,
a majority of whom shall be necessary to form
a quoroum and pronounce a decision." [Emphasis added.]

The number of judges on the Court was increased to nine by a statute now codified as RCW 2.04.070.

The statute governing hearings en banc, RCW

2.04.170, provides:

"... The presence of five judges shall be necessary to transact any business, and a concurrence of five judges present at the argument shall be necessary to pronounce a decision in the Court en banc: Provided that if five of the judges so present do not concur in a decision,

then reargument shall be ordered and all judges qualified to sit in the cause shall hear the argument but to render a decision a concurrence of five judges shall be necessary . . ." [Emphasis added.]

The clear meaning of the foregoing provisions is that the State has adopted a constitutional and statutory appellate system in which every criminal defendant possesses the right to appeal, and in which the State Supreme Court is empowered to render a decision, in an en banc hearing, only upon the concurrence of five or more of the judges. In the case of this petitioner, that system has been abandoned. The eight judges participating divided four to four on the merits in the first opinions published. Reargument was then ordered in compliance with the statute and two further oral arguments were conducted. Following these the court entered its order adopting the original per curiam opinion which had purported to affirm the conviction while announcing that the court was evenly divided. No opinion was filed which discussed or considered the validity of the purported affirmance by an equally divided court, and at all times the court has remained equally divided on the merits of the controversy.

It is the position of petitioner that the State Supreme Court's attempt to affirm his conviction in an en banc proceeding, without the required concurrence of at least five judges, violates his right to equal protection of the laws under the Fourteenth Amendment. The meaning of the foregoing constitutional and statutory provisions is clear and unambiguous; to exempt petitioner from their application is to deprive him unconstitutionally of the rights which have been afforded to all those similarly

situated in the jurisdiction. It may well be that the state could properly establish a system of criminal appeals which would provide for affirmances by an equally divided court. The fact, however, is that it has not done so, but rather has granted to all persons accused of crimes the right to appeal and the right to a decision on the merits (in en banc cases) by a concurrence of at least five of the nine judges. Therefore, any common law rule or precedent espousing affirmance by an equally divided court is inapplicable.

The constitutional guarantees of the Fourteenth Amendment apply to all acts of the state, including the acts of its judiciary. See Carter v. Texas, 177 U.S. 442. Thus, in those states where a right of appeal exists in a criminal case, that right must be afforded to the defendant in a manner consistent with the methods of appeal which are provided and in accordance with the federal guarantees of equal protection and due process. See Frank v. Magnum, 237 U.S. 309; Dowd v. United States, 304 U.S. 206; Kyle v. Wiley, 78 A. (2d) 769.

A constitutional and statutory system of appeal cannot be arbitrarily applied or ignored as the state courts see fit. It must, rather, be applied in conformity with the plain meaning of its provisions and equally to all appellants. See Griffin v. Illinois, 351 U.S. 12; Eskridge v. Washington State Board, 357 U.S. 214; Cole v. Arkansas, 333 U.S. 196. Under these decisions, where an appellate procedure is established by a state for criminal prosecutions, the procedure must be followed in all cases.

The Supreme Court of the State of Washington has frequently affirmed civil judgments by an equally divided court, and has announced that this

practice is not inflexible and that the result in each situation will lie wholly within the discretion of the court. Serra v. National Bank of Commerce, 27 Wn. (2d) 277, 178 P. (2d) 303. The practice is one of expediency and is apparently justified by the absence of any constitutional right of appeal in civil litigation. Such a rule of discretion would clearly be unconstitutional in criminal cases, where a defendant does possess a constitutional right of appeal and where the court is not free to discriminate at will among individual appellants. In only one prior case, State v. Alfred, 145 Wash. 696, 260 P. 1073, has the Washington court purported to affirm a criminal conviction without a majority. That decision may not be regarded as a precedent. however, since for some undisclosed reason the statutory process of reargument and reconsideration was never pursued or completed. The case of petitioner is thus the first and only criminal case in the jurisdiction in which the court has consciously denied to an accused his statutory and constitutional right to a majority decision.

The judicial council of the State of Washington has recently proposed a constitutional amendment which would solve the problem of an equally divided court in criminal appeals (App. 66). In the meantime, it is manifest that no decision affirming the conviction of petitioner can lawfully be rendered by fewer than five of the eight participating judges. To hold otherwise (as the state court has attempted to do without stating its grounds as required by Article IV, \$2 of the State Constitution) is to defy the obvious meaning of the constitution and statutes providing for appellate review in criminal cases, and to deny petitioner equal protection of the laws.

IX—CONCLUSION

In summary, the indictment, trial and appellate proceedings in this case all involved serious and substantial denials of petitioner's right under the Fourteenth Amendment. The grand jury which accused him was convened in an atmosphere of the most extreme public passion and hostility arising directly from the deliberate acts of an agency of the federal government; the trial court and prosecutors at that stage, far from minimizing the necessarily prejudicial effects of such publicity, exacerbated it by their remarks and conduct during the impanelment and the grand jury proceedings; petitioner was thereafter forced to trial under circumstances which manifestly defeated his right to a panel of fair and impartial petit jurors; and on the appeal which followed the State Supreme Court purported to affirm his conviction at the cost of abandoning, for this case only, a clearly established system of appeal which should lawfully apply to all accused persons. The importance of these constitutional issues is such that the case effects not only petitioner but every other citizen of the State of Washington. The requirements of this Court for Certiorari have been met, and it is respectfully urged that the Writ should be granted.

Respectfully submitted,

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No. **66**5

JAN 19 1961

IAMES R. BROWNING, Clerk

In the Supreme Court of the United States

October Term

DAVID D. BECK,

Petitioner,

VS.

STATE OF WASHINGTON,

Respondent.

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[No. 34636. En Banc. February 3, 1960.]

THE STATE OF WASHINGTON, Respondent, v. David D. Beck, Appellant.

[1] CRIMINAL LAW—APPEAL AND ERROR—HEARING AND REHEARING—DI-VIDED COURT. Where, one of the judges of the Supreme Court having disqualified himself from participating in the decision of a case, and the remaining eight judges, sitting En Banc, are equally divided in their decision and there is no majority for affirmance or reversal, the judgment of the lower court will stand affirmed.

Appeal from a judgment of the Superior Court for King county, No. 30967, George H. Revelle, J., entered February 20, 1958, upon a trial and conviction of grand larceny by embezzlement. Affirmed.

Ferguson & Burdell, Charles S. Burdell, Donald McL. Davidson, and John J. Keough, for appellant.

Charles O. Carroll and Charles Z. Smith, for respondent.

PER CURIAM.—One of the judges of this court disqualified himself from participating in the decision of this case. The eight remaining judges, after numerous conferences, are equally divided in their decision for the reasons appearing in the opinions filed.

There being no majority for affirmance or reversal, the judgment of the trial court stands affirmed.

It is so ordered.

HILL, J.—This is an appeal from a judgment and sentence entered upon a verdict of guilty to a charge of grand larceny by embezzlement. Twenty-nine assignments of error raise a multiplicity of issues.

The trial itself, divorced from the prominence of the defendant, presents a very simple factual issue.

The state's evidence showed that the defendant had possession of a 1952 Cadillac automobile, belonging to the Western Conference of Teamsters; that he authorized its sale; that it was sold for nineteen hundred dollars, and the proceeds of the sale were deposited in one of his personal accounts over which he had exclusive control; that the Western Conference of Teamsters never received any part of the nineteen hundred dollars.

To meet this evidence in support of the charge that he did

"... wilfully, unlawfully and feloniously secrete,
withhold or appropriate the said \$1,900 to his own use with
intent to deprive and defraud the owner thereof;"

there was testimony that the defendant thought the car was sold while he was out of the city; that when he returned and found that the car had been sold and the purchase price had been deposited in his account, he delivered nineteen hundred dollars to a bookkeeper and told him to apply it to the account of either the Western Conference of Teamsters or the Joint Council of Teamsters, whichever owned the car. It was patently a defense that could be contrived to meet the exigencies of the case.

The state's case was clear and unchallenged. The basic issue for the determination of the jury was whether or not it believed the explanation presented by the defense. The verdict of guilty was the jury's answer to that issue.

We shall adopt the appellant's ten divisions for the consideration of the twenty-nine assignments of error.

I. Grand Jury Proceedings. This is the longest section of appellant's brief (some 66 pages).

We disagree completely with the appellant as to the function of a grand jury in this state. In the period when an indictment by a grand jury was a prerequisite to a prosecution for a felony, it was said (and the appellant seems to have assumed its present day applicability) that a grand jury was meant to be a shield between the defendant and the zeal of the prosecutor. For the most part, the cases upon which the appellant relies come either from the time when a grand jury indictment was necessary, or from jurisdictions where it is still a requisite.

The grand jury in this state is not and was not intended to be a shield for the accused. Our state constitution provides that,

". . . Offenses heretofore required to be prosecuted by indictment may be prosecuted by information, or by indictment, as shall be prescribed by law." Art. I, § 25, Washington state constitution.

Furthermore,

". . . No grand jury shall be drawn or summoned in any

county, except the superior judge thereof shall so order." Art. I, § 26, Washington state constitution.

The prosecutor's information has become the standard means of bringing charges in this state, as in all other states which authorize its use. It has long been settled that there is no denial of Federal constitutional rights involved in the substitution of the prosecutor's information for the grand jury's indictment. Hurtado v. People of California (1884), 110 U. S. 516, 4 S. Ct. 111; State v. Nordstrom (1893), 7 Wash. 506, 35 Pac. 382; affirmed 164 U. S. 705.

The grand jury is now used not as a shield against the realous prosecutor, as in times past, but to replace, on occasion, the prosecutor who is not sufficiently zealous (for whatever reason), and, more often, as presently, as a valuable but expensive weapon (hence, used sparingly) to assist a prosecutor in investigating conditions and people insulated from investigation by the usual procedures. It has been said that,

"The inquisitorial power of the grand jury is the most valuable function which it possesses to-day and, far more than any supposed protection which it gives to the accused, justifies its survival as an institution. As an engine of discovery against organized and far-reaching crime, it has no counterpart. . . ." In re Grand Jury Proceedings, 4 F. Supp. 283, 284 (E. D. Pa. 1933).

It must be accepted for what it is: an inquisitorial body, an accusing body, and not a trial court. Its functions are investigative and not judicial. It is not concerned that the evidence, then available, establish the commission of crime beyond a reasonable doubt. State v. Lawler (1936), 221 Wis. 423, 267 N. W. 65, 105 A. L. R. 568. The end result of a grand jury's deliberations is not a judgment and sentence, but merely a charge; consequently, the concepts of procedural due process do not apply to the grand jury, except as they may be necessary to prevent prejudice to an accused or a witness in subsequent proceedings; thus, a grand jury may not deny the constitutional privilege against self incrimination, and it may not impair the constitutional protection against unreasonable searches and seizures.

The grand jury is "the voice of the community accusing

its members," (Judge Learned Hand in In re Kittle, 180 Fed. 946, 947 (S. D. N. Y. 1910)), and it may properly reflect the sentiment of the community. It

"... breathes the spirit of a community into the enforcement of law. Its effect as an institution for investigation of all, no matter how highly placed, creates the elan of democracy." United States v. Smyth, 104 F. Supp. 279, 291 (N. D. Cal. S. D. 1952).

The appellant, on the other hand, suggests that the grand jurors were disqualified because they presumably reflected the sentiment of the community from which they came. The inference from the appellant's argument is that a person who can secure a large amount of adverse publicity from newspapers, radio, and television, thereby becomes immune from grand jury investigation; the more notoriety he achieves, the more reason he should not be investigated.

Investigative agencies—city, county, state, or federal—do not wait for the hue and cry to die down before they begin to investigate or to file a charge against an accused. Nor do we see why a grand jury investigation should be handicapped or delayed because of publicity of whatever kind or character. Because a grand jury merely makes the accusation and does not try the accused, the general rule is that, barring statutory provisions to the contrary, bias or prejudice on the part of one or more of the grand jurors is not a ground for quashing the indictment. In *United States v. Knowles*, 147 F. Supp. 19, 21 (D. C. 1957), it was said,

"The basic theory of the functions of a grand jury, does not require that grand jurors should be impartial and unbiased. In this respect, their position is entirely different from that of petit jurors. The Sixth Amendment to the Constitution of the United States expressly provides that the trial jury in a criminal case must be 'impartial'. No such requirement in respect to grand juries is found in the Fifth Amendment, which contains the guaranty against prosecutions for infamous crimes unless on a presentment or indictment of a grand jury. It is hardly necessary to be reminded that each of these Amendments was adopted at the same time as a part of the group consisting of the first ten Amendments. A grand jury does not pass on the guilt or innocence of the defendant, but merely determines whether he should be brought to trial. It is purely an accusatory

body. This view can be demonstrated by the fact that a grand jury may undertake an investigation on its own initiative, or at the behest of one of its members. In such event, the grand juror who instigated the proceeding that may result in an indictment, obviously can hardly be deemed to be impartial, but he is not disqualified for that reason."

In Coblenz v. State (1933), 164 Md. 558, 166 Atl. 45, 88 A. L. R. 886, 894, 895, it is said:

". we find no ground for imposing a requirement that they must be unprejudiced, as the objection demands. On the contrary, such a requirement would seem inconsistent with their freedom to accuse upon their own knowledge, for persons who come with knowledge sufficient to serve as a basis of indictment are likely to come with the conclusion and prejudice to which that knowledge leads. They must act upon their own convictions, after conferring secretely and without any interference; but they are not required to come without any prejudice. ""

And in United States v. Rintelen, 235 Fed. 787 (S. D. N. Y. 1916), Judge Augustus N. Hand said (p. 789),

". An intelligent grand juror can hardly be found who has not decided opinions derived from his general knowledge as to any case of public notoriety. He may have even passionate feelings on the subject, which in general affect and actuate him. The question is not what his feelings were, but whether he voted for an indictment honestly and upon competent evidence. That an indictment can be quashed because the grand jurors had personal prejudices, even ill-founded ones, would leave every indictment in an important case, irrespective of the evidence on which it was found, open to attack.

We reiterate, as the quoted authorities establish, that the general rule is that, barring statutory provisions to the contrary, bias or prejudice on the part of one or more of the grand jurors is not a ground for a quashing of a grand jury indictment, or for setting aside the judgment based on the verdict of a petit jury after a trial on such an indictment. The appellant says our consideration of this case must be based upon the premise that he, as a matter of law, was entitled to an impartial and unprejudiced grand jury.

If we assume that the premise is correct, we are confronted with the fact that there is no showing that any member of the grand jury was biased or prejudiced against the appellant. His contention is that some or all of the members of the grand jury must be biased or prejudiced against him because of the unfavorable publicity which he had received. Jury verdicts will not be set aside on such unsupported suppositions.

However, the premise is not correct unless, as the appellant urges, our 1854 grand jury statute requires that grand jurors be impartial and unprejudiced. The only support for the suggestion that there is such a statutory requirement is contained in one section which relates to the longgone situation where a grand jury met for the purpose of considering whether persons then in custody or released on bail and "held to answer for an offense" should be indicted or released. Such a person might challenge the panel because it was not drawn properly (RCW 10.28.010), or might challenge individual grand jurors

". . . for reason of want of qualification to sit as such juror; and when, in the opinion of the court, a state of mind exists in the juror, such as would render him unable to act impartially and without prejudice." RCW 10.28.030.

There was a reason for such a challenge by a "person in custody or held to answer for an offense," but the appellant was not such a person. When a modern grand jury starts its investigative process it seems ridiculous to suggest that as each new personality comes under scrutiny the proceedings must stop until it can be determined whether any member of the grand jury is biased or prejudiced against him; and, if a grand juror is so biased or prejudiced, the investigation is at an end. Such a situation was not contemplated. even in territorial days, for our statute provides that a grand juror must testify of his own knowledge of offenses committed, and this testimony may initiate such investigation as would lead to an indictment. RCW 10.28.130. A grand juror so testifying is disqualified from joining in the deliberations and voting. RCW 10.28.140. Both sections assume that a grand juror so testifying is properly a member of the panel, and, as stated in Coblenz v. State, supra, any requirement that such grand juror be completely unprejudiced is inconsistent with his right and obligation to share his information with the grand jury.

To summarize this phase of the case:

- 1. We are unable to conclude that because a statute gave "any person in custody or held to answer for an offense" the right to challenge a grand juror for prejudice, there is a statutory or any other requirement that grand jurors be without bias or prejudice against any one indicted by them, except the persons for whose benefit that statute was enacted.
- 2. That, absent such statutory requirement, bias or prejudice on the part of one or more of the grand jurors is not a ground for setting aside a judgment based on a verdict of guilty returned by a petit jury.

3. There is no showing of bias or prejudice.

The charge to the grand jury is criticized and said to constitute prejudicial error. As we have indicated, a grand jury in this state is convened only for a special purpose. It was not necessary to leave to the clairvoyant powers of this grand jury the determination that they had not been called to investigate all of the persons then held in the King county jail on felony charges, as RCW 10.28.010 and 10.28.030 seem to contemplate; and it was proper to advise them they had been called for a special purpose.

It is stated, as a general rule, that the court has a wide discretion in calling matters of concern to the attention of the grand jury. 24 Am. Jur. 864, Grand Jury, § 45; 38 C. J. S. 1012, Grand Juries, § 21(b). Some courts have said that the court's charge to the grand jury is not subject to judicial review. United States v. Smyth, supra; Bethel v. State (1924), 162 Ark. 76, 257 S. W. 740, 31 A. L. R. 402; State v. Lawler, supra. As Judge James Alger Fee said in his opinion in United States v. Smyth, supra, in discussing the subject of grand jury instructions (p. 292),

". He [the court] may give instructions which do not constitute precedents and which cannot be controlled or corrected by appellate courts. These may be political manifestoes. They may be entirely erroneous. These may include cautions and admonitions to fit local conditions and guard against dangers which the judge believes exist at the moment.

and, in a footnote (36), he says,

"There has never been an instance where instruction to a grand jury was held error by an appellate court. If the indictment is good and the trial fair, that ends the matter, irrespective of what the judge may have said to the grand jury."

It must be remembered that it was not only the prerogative but the duty of the superior court to direct the grand jury's attention to those matters which the superior court judges, who had called the grand jury, believed to merit investigation by it. In so doing, it was proper for the court to make note of facts publicly known and allegations publicly heard, as a form of reference from which the grand jury should begin its investigation.

Chief Justice Vanderbilt, speaking for the supreme court of New Jersey, has said,

"While the grand jury is an independent body in investigating the facts and in making presentments and indictments, it necessarily looks to the judge presiding in the county not only for instructions on the law to govern its deliberations in particular matters but also as to the matters of crime or of public concern that should receive its attention. Any unusual matter such as the conditions in the Camden County Jail manifestly calls for specific instructions, if the criminal law is to be adequately enforced and if the public interest in the efficient administration of public institutions is to be maintained. . . . " In re Camden County Grand Jury (1952), 10 N. J. 23, 34, 89 A. (2d) 416, 423.

The extent of our review of the charge, if we have any right to review it, is clearly limited, as stated in the opinion in Wheeler v. State (1953), 219 Miss. 129, 63 So. (2d) 517, to whether or not the (p. 144)

". . . language in the judge's charge had the effect of dictating to or coercing the grand jury into returning an indictment against the appellant. . . ."

We are unable to see any element of dictation or coercion in the charge to the grand jury in this case. The court did only what it should have done in directing the grand jury's attention to the reason why it was called.

We turn now to the claimed misconduct of the prosecutor before the grand jury. The appellant attempts to apply the standards of a trial to a grand jury investigation.

Of course, the grand jury must be free from all outside interference and influence during its deliberations and voting, and this requires that no parties other than the grand jurors themselves be present at such time. Cases such as Attorney General v. Pelletier (1922), 240 Mass. 264, 134 N. E. 407; Williams v. State (1919), 188 Ind. 283, 123 N.E. 209; United States v. Wells, 163 Fed. 313 (D. C. Idaho 1908), are decided upon this principle of protection of the grand jury's deliberations, and they have no bearing on the present case.

The appellant quotes from United States v. Wells, supra. It is interesting to note that Judge Hand in United States v. Rintelen, supra, in discussing claimed misconduct of the district attorney, said of that case (p. 792),

"The case relied upon by the defendants is United States v. Wells, 163 Fed. 313. There the district attorney not only gave the grand jury a list of the defendants and commented on the weight of the evidence, but before the indictment was signed was requested to leave the room by one of the jurors, so that there could be discussion, and refused to go, said that no discussion could be had until the indictment was signed, directed the foreman to sign the indictment without permitting further consideration or reading of the indictment, and withheld various documents from the inspection of the grand jury, the contents of which they were obliged to take from the statements of the district attorney only. It is manifest that the facts of that case were utterly different from those of the case at bar. The indictment there was evidently controlled by the district attorney, was not the finding of the grand jury, and consequently the plea in abatement was there properly sustained. I am referred to no other decision than United States v. Wells, supra, where an indictment has been held bad by reason of the conduct of a district attorney before the grand jury."

Judge Hand then emphasized that the independence and freedom from coercion on the part of the grand jurors is the thing to be protected, and said (pp. 794, 795),

". . . A plea based on the conduct of the district attorney before the grand jury should be adjudged insuffi-

cient unless it clearly shows prejudice to the defendant and indicates that the alleged irregularities affected the action of the grand jury. That this is the proper rule appears from various decisions. Agnew v. United States, 165 U. S. 36, 17 Sup. Ct. 235, 41 L. Ed. 624; United States, v. American Tobacco Co., 177 Fed. 774; United States v. Nevin, 199 Fed. 833; United States v. Gradwell, 227 Fed. 243. The dictum in United States v. Wells, supra, so far as it is not in accord with the rule I have laid down, does not follow the weight of authority."

He said, also, that if

". . . a comment by the district attorney, on the testimony were held in itself to invalidate an indictment, the opportunity for technical motions and dilatory pleas in criminal cases would be greatly enlarged."

Where the prosecutor is properly in attendance during the examination of witnesses, we find a significant lack of precedents concerning judicial review or control of his conduct of such examinations. The conclusion must be that the examination of witnesses before a grand jury has never been intended to be a matter of judicial control as in the examination of witnesses before a petit jury.

Nor does this constitute any surprising gap in the framework of our system of criminal justice. Beyond enforcing the requirements that the grand jurors be so drawn and impaneled as to be representative of the community from which they come (State ex rel. Murphy v. Superior Court (1914), 82 Wash. 284, 144 Pac. 32), and that they be given the opportunity to deliberate in secrecy and in freedom from any compulsion, we find very little control exercised over what goes on in the grand jury room. No case is known in which due process considerations have been applied to the procedures by which a grand jury reaches an indictment.

Judge Learned Hand gives the reason in these words,

"One purpose of the secrecy of the grand jury's doings is to insure against this kind of judicial control. They are the voice of the community accusing its members, and the only protection from such accusation is in the conscience of that tribunal. Therefore, except in sporadic and ill-considered instances, the courts have never taken supervision

over what evidence shall come before them, and, with certain not very well-defined exceptions, they remain what the Grand Assize originally was, and what the petit jury has ceased to be, an irresponsible utterance of the community at large, answerable only to the general body of citizens, from whom they come at random, and with whom they are again at once merged. A court shows no punctilious respect for the Constitution in regulating their conduct. We took the institution as we found it in our English inheritance, and he best serves the Constitution who most faithfully follows its historical significance, not he who by a verbal pedantry tries a priori to formulate its limitations and its extent. . . " In re Kittle, supra.

In conclusion, we would emphasize again that the grand jury makes accusations; that it does not determine guilt or innocence. The trial courfs then take over, and it becomes the burden of the state to prove the guilt of the person indicted.

Were we in a jurisdiction in which a grand jury was mandatory, we would be compelled to hold that there had been no violation of the defendant's right to a grand jury in the present case. If we assume, arguendo, that there are sufficient irregularities in the present case to require such a jurisdiction to quash the indictment, then, since there is no constitutional or statutory right to a grand jury in this state, we are unable to understand how such irregularities could be of prejudice to the appellant. We find no violation of appellant's constitutional, statutory, or common-law rights in the present grand jury proceedings.

II. MOTIONS FOR A CONTINUANCE AND A CHANGE OF VENUE.

A. CONTINUANCE:

The indictment was returned by the grand jury on July 12, 1957. The trial began five months, lacking ten days (December 2, 1957), later. The trial had originally been set for October 28, 1957, but was continued for more than a month on the representation that additional time was necessary for the appellant to prepare his defense.

There is no undue haste here, and no claim that there was not adequate time for the preparation of a defense.

The appellant wanted further continuances on the ground that the inflammatory publicity concerning appellant had created an atmosphere in which it was impossible for him to obtain a fair trial.

The only statutory ground for a continuance is found in RCW 10.46.080, which has to do with the absence of material evidence, and it has no significance here. We have, however, reviewed orders denying a continuance on grounds similar to those urged here. See State v. Collins (1957), 50 Wn. (2d) 740, 743, 314 P. (2d) 660. In the Collins case we said that the granting of the requested continuance was discretionary with the trial court. We find no abuse of discretion here.

The appellant tries to apply the ex post facto test of the number on the jury panel who admitted prejudice. Appellant fails to make clear that all such prospective jurors were excused, and that thirteen jurors were selected and accepted by both sides within a very reasonable time. All of the fifty-five people who were examined on voir dire as prospective jurors had, of course, heard of the case either through television, radio, or the newspapers, but only nineteen were excused for prejudice.

It is the law of this state that the fact that a prospective juror "has formed or expressed an opinion upon what he may have heard or read," shall not disqualify him; and to excuse a prospective juror for "cause"

". . . the court must be satisfied, from all the circumstances, that the juror cannot disregard such opinion and try the issue impartially." RCW 4.44.190.

As Judge Geraghty said in State v. Patterson (1935), 183 Wash. 239, 245, 48 P. (2d) 193,

". . . It is reasonable to suppose that it was difficult to select a panel of twelve men and women who had not heard or read about the case and formed some opinion or received some impression concerning the event. Under present-day conditions, to select a jury with minds free from some such tentative opinion or impression would be possible only by drawing the panel from hermits or illiterates, and even these would not be isolated from information conveyed by the radio."

In that case, we held that the proper test to be applied to a prospective juror is not whether or not he has an opinion, but whether he can, notwithstanding an opinion, disregard it and render a fair and impartial verdict according to the evidence.

The record of the voir dire examination of those called as prospective jurors negates any contention that a continuance was necessary to insure the appellant a fair trial, and justifies the statement of Judge Malcolm Douglas (on November 26, 1957), in denying the motion for a continuance:

". . . I am not at all impressed with your contention that Dave Beck, Sr., cannot have a fair trial in this community at this time. I believe arguments such as these do poor credit to the intelligence and fairness of the high-calibered jurors that we have in this community, and I am satisfied from observing the trial of cases for many years here and observing the type and quality of jurors that we have had . . . that it is possible to find 12 jurors who can give a defendant, including this defendant, just as fair a trial in December as one could be found to give him in May. . . ."

B. CHANGE OF VENUE:

The appellant urges that it was prejudicial error to refuse his application for a change of venue to Snohomish or Whatcom county.

The procedure for a change of venue is set forth in RCW 10.25.070, which reads as follows:

"The defendant may show to the court, by affidavit, that he believes he cannot receive a fair trial in the county where the action is pending, owing to the prejudice of the judge, or to excitement or prejudice against the defendant in the county or some part thereof, and may thereupon demand to be tried in another county. The application shall not be granted on the ground of excitement or prejudice other than prejudice of the judge, unless the affidavit of the defendant be supported by other evidence, nor in any case unless the judge is satisfied the ground upon which the application is made does exist."

To conform to the statutory requirement where the motion is based on "excitement or prejudice a gainst the defendant," the affidavit of the defendant must be "supported by other evidence," and such a motion will not be granted "unless the judge is satisfied the ground on which the application is made does exist."

The affidavit of the appellant was not supported by evidence other than newspaper headlines and stories. The affidavit in support of the motion was based on an alleged belief that the hostility and prejudice against him was less extreme and less intense in the counties of Whatcom and Snohomish than it was in King county.

Appellant refers to this as an uncontroverted affidavit. The state could not well controvert what appellant believed.

The only case in which we have reversed a conviction for failure to grant a change of venue was State v. Hillman (1906), 42 Wash. 615, 85 Pac. 63. There, the affidavit set forth the content of inflammatory newspaper articles and alleged the fact (p. 618),

"... that there was an organization known as the 'Hillman Victim Association,' composed of a large number of people, organized for the purpose of creating public sentiment against appellants, and particularly against appellant Hillman, which said association by means of public meetings and individual efforts, and by mailing postal cards reflecting upon the character of said Hillman, ..."

Also the opinion points out that (p. 618),

". There was one affidavit signed by something over thirty residents of King county, wherein the affiants stated that they had read the unfavorable comments in the newspapers, and had heard them discussed by large numbers of people; that said articles and discussion dealt with the innocence or guilt of the defendants, and that the same were most always unfavorable to defendants; that the comments caused by said publications had been so widely spread that the public mind, in their opinion, was prejudiced to such an extent that a fair trial could not be had in the county; that they had heard of the organization formed for the purpose of harassing said Hillman in the courts, and elsewhere, and that the efforts of said association were reported to be very injurious to said Hillman."

In the Hillman case we have allegations of fact, which, if not true, could have been controverted. Here we have

only legal conclusions based upon information and belief, not capable of contravention.

Even where the alleged offenses have been accompanied by a great deal of public indignation and prejudice against the accused, the appellate court will not disturb a determination by the trial court that a change of venue should not be granted in the absence of a showing of a manifest abuse of discretion. State v. Guthrie (1936), 185 Wash. 464, 56 P. (2d) 160; State v. Schneider (1930), 158 Wash. 504, 291 Pac. 1093, 72 A. L. R. 571; State v. Schafer (1930), 156 Wash. 240, 286 Pac. 833; State v. Lindberg (1923), 125 Wash. 51, 215 Pac. 41; State v. Wright (1917), 97 Wash. 304, 166 Pac. 645; State v. Welty (1911), 65 Wash. 244, 118 Pac. 9.

In the Lindberg case, the accused was a director of a bank which had failed. It had a great many stockholders and many more depositors, and the failure was a matter of great public interest and concern. The court there said (p. 54),

". This affidavit is uncontroverted and contains recitals from which it can be inferred that prejudice to some extent existed in certain parts of the county against the officers generally of the particular bank, and were the question one on which this court could exercise an independent judgment, we are free to say that it would be permissible to reach a conclusion different from that reached by the trial court. But the question is not one of the first instance in this court. By the express provisions of the statute (Rem. Comp. Stat. §§ 2018, 2019) [P. C. §§ 9397, 9398], the question is vested in the first instance in the discretion of the trial court, and we can review its ruling only for gross abuse. . . "

The court then used a long quotation from State v. Welty, supra, which has been repeated enough times to fill twenty pages of our reports. (We adopt it but do not repeat it.) Our conclusion in the Lindberg case was that we found nothing warranting a holding that the trial court grossly abused its discretion, and then said (p. 55),

". . . The purpose of a change of venue is to secure to the accused a trial before an impartial jury, and if the record does not disclose affirmatively that the accused did not have such a trial, it is very persuasive of the fact that the trial court did not err in denying the change. . . "

We find, in the present case, no abuse of discretion by the trial court in denying the motion for a change of venue; and this is bolstered by our conclusion, after having studied the entire record, that the defendant did, in fact, have a fair trial.

III. RIGHT TO USE OF GRAND JURY TRANSCRIPT.

William F. Devin, one of the special deputy prosecuting attorneys before the grand jury, testified concerning certain statements made by the appellant in his testimony before the grand jury. Mr. Devin was testifying not from any document or transcript, but from his recollection of answers given by appellant.

The appellant urges that he was entitled to a transcript of his entire testimony before the grand jury to facilitate his cross-examination of Mr. Devin. He cites no authorities in support of such a proposition. He passes but lightly on the fact that the trial court did make available to appellant's attorneys that portion of appellant's testimony before the grand jury which varied from Mr. Devin's recollection thereof.

A defendant is not entitled, as a matter of right, to a copy of the transcript of his testimony before a grand jury; and the extent to which such a transcript will be made available to him is within the sound discretion of the trial court. State v. Ingels (1940), 4 Wn. (2d) 676, 104 P. (2d) 944; State v. Morrison (1933), 175 Wash. 656, 27 P. (2d) 1065. This is likewise the rule in the federal courts. Pittsburgh Plate Glass Co. v. United States (1959), 360 U. S. 395, 3 L. Ed. (2d) 1323, 79 S. Ct. 1237.

The appellant has cited cases such as Jencks v. United States (1957), 353 U. S. 657, 1-L. Ed. (2d) 1103, 77 S. Ct. 1007, and Powell v. Superior Court (1957), 48 Cal. (2d) 704, 312 P. (2d) 698, which have to do with the making available to a defendant the written statements by witnesses or confessions of the defendant in the possession of the prosecution.

The United States Supreme Court has recently (June 22, 1959) ruled that the Jencks decision does not encompass grand jury minutes. In Pittsburgh Plate Glass Co. v. United

States, supra, the trial judge refused the defense the right to inspect grand jury testimony of a key government witness. The supreme court held that the determination of such an issue was committed to the sound discretion of the trial judge; and that the defendant was entitled to such a disclosure only where the ends of justice required setting aside the public policy of maintaining the secrecy of the grand jury proceedings. The burden is on the defendant to show a particularized need for it. United States v. Proctor & Gamble Co. (1958), 356 U. S. 677, 2 L. Ed. (2d) 1077, 78 S. Ct. 983.

We have recently explored the whole area covered by the Jencks case in State v. Thompson (1959), 154 Wash. Dec. 91, 338 P. (2d) 319, and concluded that it was a matter in the discretion of the trial court whose action will not be disturbed on appeal unless there is a manifest abuse of that discretion. We are convinced that the trial court properly exercised its discretion in allowing the defendant only limited access to the transcript of his testimony before the grand jury.

IV. THE PROPRIETY OF THE PROSECUTION'S CONDUCT TO-WARD DEFENSE WITNESSES.

The gist of four assignments of error is that the claimed prejudicial conduct of the prosecuting attorney toward appellant and his witness Marcella Guiry entitled him to a new trial. The claim is that in each instance "the prosecution attempted to influence the jury by improper tactics relating to the right against self-incrimination."

We will consider the situations separately. The witness Marcella Guiry was the appellant's secretary. Before the grand jury she had invoked the fifth amendment and declined to testify as to certain matters, but at the trial she did testify as to those matters.

She was asked, on cross-examination, if her answer to certain questions before the grand jury were the same as her answers in court. The appellant's claim was that she either had to say "no," or disclose the fact that she had invoked the fifth amendment, and that either would be prejudicial. She was never placed in that position because an

objection was sustained to the question. Appellant urges, however, that the asking of the question was prejudicial error; and relies on State v. Emmanuel (1953), 42 Wn. (2d) 1, 253 P. (2d) 386, and State v. Carr (1930), 160 Wash. 83, 294 P. (2d) 1016. These were cases of persistent misconduct and are not applicable here. There was, here, no effort to pursue the matter further after the objection was sustained.

In such a situation as this, the judgment of the trial court in passing upon the motion for a new trial must be accorded great weight. The trial judge is able to observe any reaction of the jurors unfavorable to appellant by reason of misconduct of counsel, and is in a much better position than is this court to determine whether it has been prejudicial. Discargar v. Seattle (1948), 30 Wn. (2d) 461, 191 P. (2d) 870; State v. Van Luven (1945), 24 Wn. (2d) 241, 163 P. (2d) 600; O'Neil v. Crampton (1943), 18 Wn. (2d) 579, 140 P. (2d) 308; Marlowe v. Patrick (1935), 181 Wash. 647, 44 P. (2d) 776. The trial court did not see any prejudicial misconduct in the asking of the question to which an objection was sustained; and we find no abuse of discretion in his refusal to grant a new trial in consequence of the claimed misconduct.

We turn now to the appellant's contention, regarding his own examination. When he took the stand, he limited his testimony rather rigidly to matters concerning his official position with various labor organizations, such as the International Brotherhood of Teamsters, the Western Conference of Teamsters, and the Joint Council of Teamsters; the location of his offices in Washington, D. C., and Seattle; his employment of the accountancy firm of Friedman, Lobe & Block for his personal financial books and records. He did not testify with respect to the transaction, which was the basis of the indictment.

No objection was made during the appellant's cross-examination, except that the matter inquired about was immaterial, irrelevant, and beyond the scope of the direct examination. (There is one exception concerning which we will make special reference.)

He testified, over objection, that Mrs. Marcella Guiry took care of his books so far as the B & B Investment Company was concerned; that he could not identify her handwriting on certain exhibits; that certain accounts seemed to be in connection with his business; that there was a sale of property with Callahan, but he did not recall the details; that he authorized the sale of a Cadillac, and the amount received was nineteen hundred dollars; that the money was deposited in the B & B Investment Company account.

All of which was entirely consistent with the appellant's theory of the case.

Objections were sustained to questions as to whether he drove the 1952 Cadillac; when the final payment was made on the sale of the Beck-Callahan property; and whether appellant was in town when the proceeds of the sale were deposited in the B & B Investment Company, account.

When the question of "who sold the car, do you know?" was asked, counsel for appellant asked that the jury be excused, and stated to the court in the absence of the jury,

"That question being outside the scope of the direct examination and having been asked by Counsel, and since it is in effect a comment on the defendant's failure to testify with respect to the car and violates his constitutional rights, I move for a mistrial."

The motion was denied, and the objection sustained on the ground that it went beyor I the scope of the direct examination.

Appellant urges that the rule is that the cross-examination of a defendant who takes the stand is limited to subjects to which the defendant testified, and that examination beyond the scope of the direct examination, in such cases, constitutes a violation of the defendant's right against self incrimination.

When a defendant takes the stand in his own behalf he is subject to the same rules on cross-examination as other witnesses. State v. Putzell (1952), 40 Wn. (2d) 174, 242 P. (2d) 180; State v. Jeane (1950), 35 Wn. (2d) 423, 213 P. (2d) 633; State v. Ternan (1949), 32 Wn. (2d) 584, 203 P. (2d) 342; and, if he opens up a subject on direct examination, he can be cross-examined thereon. State v. Johnson (1935), 180

Wash. 401, 40 P. (2d) 159; State v. DeGaston (1940), 5 Wn. (2d) 73, 104 P. (2d) 756.

The latitude to be allowed on cross-examination is within the sound discretion of the trial court. State v. Schneider, supra; State v. Jeane, supra. The trial court adequately protected the appellant.

The appellant is urging, as in the case of Mrs. Guiry, that, even though objections were sustained, the asking of the questions in itself constituted prejudicial error.

Appellant again relies on State v. Emmanuel, supra, together with State v. Carr, supra; but the circumstances which warranted reversal in those cases are readily distinguishable from those with which we are here concerned:

We fail to find any indication that appellant's right against self-incrimination was violated, or that the court abused its discretion in its handling of his cross-examination.

V. Admission of State's Exhibits Nos. 17 and 18.

The issues raised by the appellant's objections to state's exhibits Nos. 17 and 18 must be examined against the background of the circumstances, and the position of the state and the appellant with reference to them.

It is not disputed that the nineteen hundred dollars, which the appellant is charged with having embezzled, was feposited February 3, 1956, in a bank acount of which he was the sole owner, the account being in the name of the "B & B Investment Co."

How this nineteen-hundred-dollar item was entered in the records of the "B & B Investment Co." became the subject of controversy. The state insisted that the nineteenhundred-dollar item was entered in the "B & B Investment Co." records as the proceeds of the sale of Beck-Callahan property. This would support an inference of an intention to conceal the real source of the nineteen hundred dollars.

It is conceded that the "B & B Investment Co." was disposing of real property known as the Beck-Callahan property, and \$16,900 had been received by the "B & B Investment Co." from that source in January of 1956.

The state's evidence in support of its position was exhibit No. 17, asphotostatic copy of a work sheet prepared in March.

1957, by Carl E. Houston, an accountant employed by the accounting firm which was preparing the appellant's 1956 income tax return. Taking his information from the "B & B Investment Co." ledger sheet or journal (a loose-leaf record), he entered on his work sheet under "Sales of real estate and other assets Beck/Callaham \$16,900.00," as part of the January, 1956, receipts and "Beck/Callahan \$19,000.00," as part of the February receipts. He discovered his error as to the latter amount, and changed it to \$1,900.00.

The defense was urging that Houston had made a mistake, and that the actual entry in the "B & B Investment Co." ledger sheet or journal for February, 1956, was "Sale Cadillac Auto \$1,900.00," as shown by defendant's exhibit No. 22, which the defense claimed to be the ledger sheet or journal from which Houston secured his information.

If Houston did make a mistake, it was not discovered until after he had testified before the grand jury, and his work sheet had been before that body and had been photostated. State's exhibit No. 17 was the photostatic copy of that work sheet. The actual work sheet remained in the possession of the accounting firm until produced at the trial. At that time it appeared that the nineteen hundred dollar item had been moved from "Sales of real estate and other assets Beck/Callahan" to a new heading of "Sale of Auto." With this change, the original work sheet was admitted as state's exhibit No. 18.

Houston testified that it was as a result of the grand jury investigation that the accountants first discovered that the nineteen hundred dollar item came from the sale of an automobile. After his testimony before the grand jury, he did not again examine the "B & B Investment Co." ledger sheet or journal until in August or September, 1957. On his reexamination he found the entry "Sale Cadillac Auto \$1,900.00," as shown in defendant's exhibit No. 22, and then made the change, to which we have referred, on st. te's exhibit No. 18.

One can believe that Houston made a mistake in March, 1957, and that exhibit No. 22 is the original and only ledger sheet or journal; or he can believe that Houston copied correctly what he saw in March, 1957, and that Marcella Guiry

prepared a new ledger or journal sheet and substituted it for the original after the grand jury investigation and before the trial. All entries on exhibit No. 22 are in her handwriting, and such a substitution would have been possible.

It must be remembered that the ledger sheet or journal of the "B & B Investment Co." was a part of the books and records of the appellant, which the state could not subpoena or demand that he produce for the reason that it was beyond the power of the court to enforce the demand. State v. Morden (1915), 87 Wash. 465, 151 Pac. 832; State v. McCauley (1897), 17 Wash. 88, 49 Pac. 221. To make such a demand in the presence of the jury would be error warranting a reversal. State v. Jackson (1915), 83 Wash. 514, 145 Pac. 470.

We are satisfied that the state's exhibits Nos. 17 and 18 were admissible as secondary evidence, and the best available to the state of what the appellant's records showed as to the source of the nineteen hundred dollars. Hartzog v. United States (1954), (4th C. A.) 217 F. (2d) 706; Lisansky v. United States (1929), (4th C. A.) 31 F. (2d) 846, 67 A. L. R. 67. Its weight was for the jury.

The defense urged that when it offered the ledger or journal sheet (defendant's exhibit No. 22), it was the best evidence, and secondary evidence was not admissible. That, of course, assumed the authenticity of exhibit No. 22. The state was not bound by, nor was the jury obliged to believe. Mrs. Guiry's testimony that she had made the entry "Sale Cadillac Auto \$1,900.00" in the first part of March, 1956; and that she had not seen the ledger or journal sheet in question since March, 1957, until she saw it in the court room. Unosawa v. Wright (1954), 44 Wn. (2d) 777, 270 P. (2d) 975.

Neither does Houston's present opinion, that he made a mistake (based as it is on his assumption of the authenticity of exhibit No. 22), nullify the inference to be drawn from his original entry on his work sheet, which he believed to be correct at that time.

All of the evidence by both sides on the issue of how this nineteen hundred dollar item had been carried in the appellant's records was before the jury. Whether or not Houston's original entry on his work sheet was a correct one, or was an error, was for the jury. Burrill v. S. N. Wilcox Lbr. Co. (1887), 65 Mich. 571, 32 N. W. 824.

VI. SEPARATION OF THE JURY.

The defendant invoked RCW 10.49.110, prohibiting the separation of jurors. He argues that the jurors were permitted to separate, and that prejudice to the defendant is conclusively presumed therefrom.

The specific instances referred to in plaintiff's brief are four:

- 1. Juror No. 3 was observed talking with two nonjurors, a woman and an elderly man.
 - 2. Juror Eleanor Eaken conversed with her husband.
- 3. On one visit by her husband to juror Eleanor Eaken, he was accompanied by their son.
 - 4. Juror Frank Walton conversed with his wife.

In every instance, the claimed separation was no more than a communication with a nonjuror (wife, husband, or son of the juror) relative to family matters or the needs of the juror; it was, in each instance, in the presence of a bail-iff, and there was no physical separation from the other jurors.

In our earlier decisions we placed a very narrow meaning on the word "separation." In State v. Morden, supra, the state and the defendant had agreed that over a weekend the jurors in the charge of the bailiffs, might attend a church service and go to a theatre. On Sunday afternoon, eleven jurors, with one of the bailiffs, went to see a movie. The other juror, having (p. 475)

". . . conscientious scruples against attending places of amusement on Sunday, remained outside within the portico or porch of the theater building during that period.

"Affidavits of the juror and bailiff who remained outside the theater were produced to the effect that, during the period of separation, they had no conversation with any one. . . ."

We held that this was a separation within the purview of the statute.

By 1918, we were questioning that interpretation; and in State v. Harris (1918), 99 Wash. 475, 477, 169 Pac. 971, we said,

". . . The statute making women eligible to jury service of itself necessitated, and was of itself, a change in the existing system relating to the separation of juries. In trials protracted over considerable periods of time, the rules of society, propriety, and common decency require that mixed juries be allowed to separate according to sexes at stated

intervals during its progress.

"It may be questioned, moreover, whether the courts have not placed a too narrow construction on the word 'separate' as used in the statutes. The object and purpose of keeping them sequestered is, and has always been, to keep them from being influenced with reference to the matters given them in charge, by ulterior practices. This purpose is as well accomplished when the jury are kept singly under the charge of sworn officers of the court as it is when they are kept under like officers in a body."

Later decisions have further deviated from the strict interpretation of the Morden case, and have permitted the physical separation of jurors in the custody of bailiffs, or under circumstances where no possible prejudice could result. State v. Hunter (1935), 183 Wash. 143, 48 P. (2d) 262; State v. Stratton (1933), 172 Wash. 378, 20 P. (2d) 596.

While conversations, such as occurred in this case at the open door of the jury dormitory and on one occasion on the street near the court house door as the jurors were going to dinner, should be avoided, they do not constitute a separation of the jury, but, rather, "Communication with or by jurors." It was so categorized in State v. Rose (1953), 43 Wn. (2d) 553, 262 P. (2d) 194, where jury miseonduct was discussed under three categories: (a) Entry of jury room by unauthorized person with a document for a juror; (b) Communications with or by jurors; (c) Separation of jury.

But, giving the appellant the benefit of the more rigid rules and the prima facie presumption of prejudice that follows upon a separation or upon a communication between a juror and a nonjuror, the burden is on the state to show that no prejudice actually resulted. State v. Rose, supra. State v. Smith (1953), 43. Wn. (2d) 307, 261 P. (2d) 109;

State v. Amundsen (1950), 37 Wn. (2d) 356, 223 P. (2d) 1067, 21 A. L. R. (2d) 1082.

Here, the state did sustain that burden and established that every conversation between a juror and a nonjuror was in the presence of a bailiff, and that the subject matters of the conversations could not have been in any way prejudicial to the appellant. Under such circumstances, we will not disturb the order of the trial court in refusing to grant a new trial. State v. Smith, supra; State v. Carroll (1922), 119 Wash. 623, 206 Pac. 563; State v. White (1920), 113 Wash. 416, 194 Pac. 390.

VII. DEPRIVATION OF A PEREMPTORY CHALLENGE.

Appellant urges that Raymond Kraatz, contrary to his testimony on voir dire, was actually hostile to the Teamsters Union. The apppellant was forced to use a peremptory challenge to keep Kraatz off of the jury.

Evidence of the prospective juror's claimed duplicity was brought to the attention of the trial court for the first time in the motion for a new trial. It is the appellant's contention that had the juror's true attitude been known to the court during the *voir dire* examination of Kraatz, he would have been excused for cause; and appellant would have thus been saved a peremptory challenge.

The purpose of the voir dire examination is to enable the parties to learn the state of mind of the prospective juror, and to demonstrate, if possible, that the prospective juror is subject to a challenge for cause. The appellant does not contend that any basis was developed for a challenge for cause in the examination of Kraatz.

Had Kraatz served on the jury, and had it developed that the appellant had been deceived by his false answers to questions on voir dire, an entirely different question would be presented; but, even were that the claimed situation, the bias of the juror would have to be established by something more reliable than hearsay affidavits. Casey v. Williams (1955), 47 Wn. (2d) 255, 287 P. (2d) 343; State v. Maxfield (1955), 46 Wn. (2d) 822, 285 P. (2d) 887; State v. Patterson, supra; State v. Dalton (1930), 158 Wash. 144, 290 Pac. 989; State v. Simmons (1909), 52 Wash. 132, 100 Pac. 269; State v. Wilson (1906), 42 Wash. 56, 84 Pac. 409.

Here, Kraatz did not deceive the appellant; he was, in fact, excused. That, after all, is what peremptory challenges are for. The purpose of such challenges is to get off of the jury the person whose bias a party knows or suspects but can't establish on his voir dire examination. If we assume the bias of Kraatz, it would be a new development in the field of criminal law to hold that a defendant, who had used all of his peremptory challenges, was entitled to a new trial if he could show, at some time before the motion for a new trial was argued, that one of the prospective jurors (excused by a peremptory challenge) had an actual bias.

Appellant has presented no authority for such a holding, and we are satisfied there is none.

VIII. THERE WAS INSUFFICIENT EVIDENCE TO CONVICT.

The statute under which this prosecution is brought is as follows:

"Every person who, with intent to deprive or defraud the owner thereof—

"(3) Having any property in his possession, custody or control, as bailee, . . . agent, . . . trustee, . . . or officer of any . . . association or corporation, . . . shall secrete, withhold or appropriate the same to his own use . . .

"Steals such property and shall be guilty of larceny." RCW 9.54.010.

It is appellant's contention that, at most, the state's case showed receipt by him of the nineteen hundred dollars from the sale of the car, and a failure to account therefor; and, since the intent to appropriate the money and deprive the owner of it was not established, there was not sufficient evidence to prove embezzlement.

A similar contention was made in State v. Campbell (1918), 99 Wash. 502, 169 Pac. 968, where the prosecution was under the same statute. A syllabus in that case states the facts and applicable rule concisely:

". . . In a prosecution for the embezzlement of the

proceeds of a note and mortgage delivered to the accused for the purpose of collection, intent to deprive the owner of the property is sufficiently established by the fact that accused sold the note and mortgage to a third person and converted the proceeds to his own use."

The following quotation from the opinion amplifies the reasoning summarized in the syllabus (pp. 504, 505):

"It is next urged that there was no direct and specific evidence tending to prove an intent on the part of appellant to deprive Mrs. Fuchs of her property. No instrument has yet been invented by means of which the inner workings of the human mind may be revealed; hence criminal intent, in the vast majority of cases, is not capable of direct and positive proof. In the absence of an express declaration thereof, a criminal purpose can only be established as an inference from action and conduct—the external manifestations of design. Since, in embezzlement, the necessary effect of the wrongful conversion is to deprive the owner of his property, the act of appropriation gives rise to the inference that the perpetrator intended the inevitable result of his conduct. In this case, the intent to defraud was evidenced by the act of the appellant in selling the note and mortgage to a third person and converting the proceeds to his own use or to the use of Colin Campbell Security Company, instead of faithfully executing his trust by collecting the amount secured by the mortgage and accounting therefor to Mrs. Fuchs.

- A stronger case for the appellant-defendant was made in State v. Jakubowski (1913), 77 Wash. 78, 87, 137 Pac. 448, where we said,
- ". . . In our statement of the case, we have detailed every salient feature of the evidence, and while it appears to this court as persuasively negativing a criminal intention on the appellant's part, its weight and the credibility of the appellant and his witnesses were for the jury. As we have seen, there was adduced by the state competent evidence tending to prove every element of the crime as charged. The trial court denied the appellant's motion in arrest of judgment and refused to grant a new trial upon conflicting evidence. In such a case, whatever our own opinion as to the weight or preponderance of the evidence, we cannot reverse the action of both the trial court and the jury. To do so would be to invade the province of both. It would be to substitute our judgment for that of the jury as to a

question of fact upon conflicting evidence, and our discretion

for that reposed by statute in the trial court.

"This court has heretofore announced that it will not disturb verdicts of this character, on the ground of alleged insufficiency of evidence, where there is evidence to support the verdict, although it may not be of the most convincing kind. Both the jury and the trial court have the opportunity to hear and see the several witnesses, to note their manner as to apparent candor and truthfulness, and are therefore better prepared to pass upon the credibility of their testimony than is this court with only a bare record of the words spoken by the witnesses. The weight of the evidence having been first passed upon by the jury, and next by the trial judge in denying the motion for new trial, we shall not undertake to say that they were wrong.' State v. Ripley, 32 Wash. 182, 72 Pac. 1036."

See, also, State v. Dudman (1922), 119 Wash. 522, 205 Pac. 848.

The court instructed the jury (and no error has been assigned to the instruction):

"I instruct you that the intent to deprive or defraud, which is one of the elements of the offense of grand larceny, as charged in the Indictment in this case, must be proved by competent evidence beyond a reasonable doubt. However, it need not be proved by direct and positive evidence, but the existence of such intent may be inferred from the acts of the parties and the facts and circumstances surrounding them." Instruction No. 5.

It is unnecessary to again review the evidence in this case, nor is in our responsibility to weigh it. There was no doubt in the mind of the trial court, nor is their in ours, that the jury was entitled to infer the intent to deprive the Western Conference of Teamsters of the nineteen hundred dollars from the acts (which includes failure to act) of the appellant.

The evidence shows that the appellant knew as early as February, 1956, that the nineteen hundred dollars had been deposited in his bank account; that more than a year later it had not been paid over to the owner. The only semblance of an explanation came in the state's case, through the testimony of William F. Devin, as to statements made by the appellant before the grand jury, i.e., that not knowing to

whom the car belonged, he had given nineteen hundred dollars in cash to Fred Verschueren, Jr., with instructions to apply it to the proper account. The jury was not obligated to believe that explanation.

The appellant was clearly confronted with a prima facie case, and the defense presented did no more than suggest possibilities of what appellant might have done or might have intended to do with the nineteen hundred dollars, by way of explanation of why it had not been paid over to its rightful owner.

There is no merit in the assignments of error raising the issue of the insufficiency of the evidence to sustain the verdict.

IX. MISCONDUCT OF THE DEPUTY PROSECUTING ATTORNEY IN ARGUMENT TO THE JURY.

Two statements made by the deputy prosecuting attorney, in the course of rebuttal argument, are urged as error.

The one of which appellant makes the most bitter complaint is (p. 1332),

"But now we get down to the point where everything is deadly serious. You have a tremendous responsibility. Counsel refers to all of this terrible publicity. It is true. The eyes of the entire world probably are upon you right now and the evidence that has been presented here against this defendant has been widespread. There is no question about that. You should return a proper verdict, that is your responsibility. You are the ones that are going to have to look at yourselves the rest of your lives. You are the ones that are going to have to be with your neighbors and friends and hold your head up high and say, 'I did what my heart and mind told me.' You are not to be influenced at all by any sympathy or prejudice. Nothing at all can be considered by you except the evidence from this witness stand."

The appellant says that the purpose of that statement was to remind the jury of the great amount of adverse publicity against him, and to remind them that they ought to take into account the public clamor and its desire that the appellant be convicted; and, further, to remind them that if they returned a verdict of not guilty, they would be held up to public disfavor and ridicule.

We do not so interpret the statement by the deputy prosecuting attorney. Comment on the matter of publicity was invited by the emphasis that appellant's counsel placed on it in his argument in such statements as (p. 1266),

". . . the rumors and the gossip and the frenzied, insane propaganda that could have been created only by somebody with the insanity of a Goebels. . . ."

and,

". . . the tremendous amount of unfavorable publicity that has been circulated about Mr. Beck, almost to the point of saturation of the public press and the radio and the newspapers, repeated and repeated; the Nazi system."

Even in the portion of the argument objected to, the deputy prosecuting attorney tells the jury,

". . . You are not to be influenced at all by any sympathy or prejudice. Nothing at all can be considered by you except the evidence from this witness stand."

The other statement of the deputy prosecuting attorney, concerning which complaint is made, has to be placed in context to be understood.

Appellant's counsel had been at some pains to explain to the jury why he did not call Fred Verschueren, Jr., as a witness. (Verschueren, Jr. was the person to whom appellant supposedly had given the nineteen hundred dollars to turn over to the owner of the 1952 Cadillac.) Commenting on counsel's explanation, the deputy prosecuting attorney said (p. 1316),

"He tells us that he wants to protect Mr. Verschueren, Jr. Mr. Verschueren, Jr., you will recall, testified before the grand jury. There was testimony to that effect here. Mr. Beck testified before the grand jury and the grand jury wasn't made up of four ogres who were breathing down the neck of anybody. It was made up of seventeen people just like you, seventeen citizens selected to sit on that grand jury and seventeen people after they heard the testimony of Mr. Regal and Mr. Verschueren, Jr. returned an indictment and that is what you are trying here today.

"Now the question is, in Mr. Burdell's strategy, should he take Mr. Beck and put him on the stand and have him explain this which he didn't do and could he bring Mr.

Verschueren, Jr. in to have him explain this which he didn't do, because he felt most likely, we can assume he felt this way, if I do that, I really am sunk, so what I have to do is to try to talk the jury into assuming things from these little bits of evidence that I can bring in with witnesses of some stature in the community." (This is taken from the statement of facts. Italics are ours.)

Appellant complains of the italicized portion. (As quoted in appellant's brief, Mr. Regal is changed to Mr. Beck in the next to the last line of the italicized portion; and we will assume, for present purposes, the change to be correct.) Appellant urges that the italicized portion of the argument throws the weight and prestige of the grand jury into the scale against him. Read in context, as an answer to the appellant's explanation for not calling Fred Verschueren. Jr. as a witness, it is a proper response. We have consistently held statements of a prosecuting attorney, which would ordinarily be improper, will not be regarded as prejudicial error where they are in answer to and are invited by the argument made by defense counsel. State v. Collins. supra; State v. Taylor (1955), 47 Wn. (2d) 213, 287 P. (2d) 298; State v. Harold (1954), 45 Wn. (2d) 505, 275 P. (2d) 895; State v. Van Luven, supra; State v. Wright, supra.

Appellant does not argue, under this division of his brief, his other claim of misconduct of counsel: that the prosecutor, by an illustration used in argument (i.e., that one who stole a bracelet before a court room full of people was entitled to the presumption of innocense if he went to trial), destroyed any effect of the presumption of innocence, and thereby denied him the benefit of that presumption.

We do not agree. Prosecutors have been using similar illustrations for many years, but it has never before been urged as a denial of due process.

Appellant argues this in his division X, but we have placed it with other claimed misconduct of counsel.

X. INSTRUCTIONS GIVEN AND REFUSED:

Up to this point, we have accepted, in substance, the headings which the appellant has given to the divisions in his brief. Appellant's heading for division X, however, is, in

effect, Denial of Due Process. He reargues briefly the errors already urged with reference to the grand jury proceeding, and asserts that the accumulative effect of the many errors constitutes a denial of due process. Having found no prejudicial error in divisions I to IX, we are not impressed with their cumulative effect.

We will, therefore, cover only the matters not heretofore urged. Appellant assigned error to instructions Nos. 2, 3, 14, and 16, but argues only as to Nos. 3 and 16. Appellant assigned errors to the failure to give his requested instructions Nos. 10, 14, and 38.

It is urged that the trial court should not have given instruction No. 3, because it merely emphasized the most favorable aspects for the state—already adequately stated in instruction No. 2.

Instruction No. 2 was the comprehensive statement of all of the elements of the offense which the state must prove before the jury could convict.

Instruction No. 3 is a definition of the crime of grand larceny by embezzlement, substantially in the words of the statute. RCW 9.84.010(3); RCW 9.54.090(6).

Under the facts of this case it was not error to instruct in the language of the statute. State v. Sedam (1955), 46 Wn. (2d) 725, 284 P. (2d) 292; State v. Bixby (1947), 27 Wn. (2d) 144, 168, 177 P. (2d) 689; State v. Verbon (1932), 167 Wash. 140, 8 P. (2d) 1083.

Appellant points out no error in instruction No. 16 on presumption of innocence and reasonable doubt, but urges that his instruction No. 10 on that subject was preferable, particularly in view of the argument of the deputy prosecutor on the presumption of innocence. (The trial court had no way of knowing when the instructions were given what the deputy prosecutor's argument would be.)

The trial court's instruction was a proper statement of the law, and seems preferable to us to the much longer and more argumentive instruction proposed by the appellant. It certainly was not error to refuse a requested instruction where the principle of law stated therein was adequately covered by the instruction given. State v. Myers (1959).

53 Wn. (2d) 446, 334 P. (2d) 536, and numerous cases therein cited.

It is urged that, since the trial court gave instruction No. 3 (the statutory definition of grand larceny by embezzlement), it should have given appellant's proposed instruction No. 14 to the effect that the defendant could not be guilty unless there was a "definite intent to take the proceeds [of the sale of the Cadillac] from the Western Conference of Teamsters and deprive it of the money."

The element of intent was stated in instruction No. 2, and emphasized and re-emphasized in instructions Nos. 5, 7,

and 9.

The jury was more than adequately instructed on the necessity of intent, and the trial court did not err in refusing to give appellant's proposed instruction No. 14. State v. Myers, supra.

Appellant's proposed instruction No. 38, after stating the

presumption of innocence, said,

"This must especially be kept in mind when any person has received unfavorable nation-wide publicity in non-judicial proceedings which have the tendency to be one-sided because the party involved has no opportunity to make any adequate defense."

In his brief, appellant says,

"Finally, the failure of the court to grant appellant's instruction No. 38 . . . was certainly error in view of the fact no other instruction of the court told the jury to disregard the unprecedented publicity."

No authority is cited, and there is no argument beyond the statement quoted from the brief. One could not refer to this as a slanted instruction, because it is practically perpendicular. There was no evidence in the case to which the instruction applied. The matter of unprecedented publicity was, as we have seen, injected into the case by appellant's counsel in argument to the jury. The trial court properly refused to give such an instruction. State v. Hart (1946), 26 Wn. (2d) 776, 175 P. (2d) 944; State v. Powell (1927), 142 Wash. 463, 253 Pac. 645.

The length of the record (2,400 pages), and the number and novelty of many of the issues raised on the appeal, has

unduly delayed the determination of this nineteen hundred dollar grand-larceny-by-embezzlement case.

We find ample evidence to sustain the verdict and no prejudicial error in the record. The judgment appealed from is affirmed.

WEAVER, C. J., MALLERY, and OTT, JJ., concur.

Donworth, J. (dissenting)—In my opinion, the majority, in upholding appellant's indictment, has reached a result which is directly contrary to the settled policy of this state as determined by our legislature with respect to the impaneling of grand juries. Therefore, I cannot agree with the majority holding that appellant was not entitled, under the laws of this state, to have a grand jury composed of impartial and unprejudiced jurors.

In considering appellant's motion to quash the indictment, we must bear in mind that appellant was indicted by a grand jury impaneled in the state of Washington and not by a Federal grand jury or a grand jury of a state whose statutes differ from ours. However, the majority holds that the superior court need not inquire whether the prospective grand jurors entertain any prejudice against the person whose conduct the court, in its charge, directs them to investigate, and bases its holding upon decisions of the Federal courts whose grand juries need not be composed of impartial and unprejudiced jurors because no statute or rule of court so prescribes.

To fully understand the very serious problem presented by the three assignments of error quoted below, it is necessary to consider certain material facts shown by the record, which are not referred to in the majority opinion, presumably because of its view that everything that happened prior to the trial of the case is immaterial. In order to properly consider the legal question which is presented, I consider it necessary to state these facts in some detail before coming to a discussion of the applicable statutes and decisions of this court.

The assignments of error with which we are first concerned are as follows: "25. The court denied appellant's rights to a fair and impartial grand jury.

"26. The court erred in prejudicing the grand jury against

appellant by its charge.

"28. The court erred in failing to set aside the indictment for misconduct of the prosecutor before the grand jury."

In passing upon the merits of these assignments, we should have in mind the unique situation which existed during the three months immediately preceding the convening of the

grand jury.

The grand jury, which returned the indictment herein, was convened on May 20, 1957. Several months prior thereto, the Senate Select Committee on Improper Activities in the Labor-Management Field (commonly referred to as the Senate Rackets Investigating Committee) commenced an investigation of certain labor unions and their officers. Needless to say, these hearings were not of a judicial nature. Ordinary rules of evidence were not applicable, nor were the witnesses subject to cross-examination. The stated object of the committee hearing was to obtain information which would aid Congress in enacting legislation bearing upon labor-management relations.

Most of the hearings were conducted in public and were widely reported by the various news media. During the period of approximately three months prior to the impanelment of the grand jury, appellant was the principal subject of charges of misconduct made in the course of the hearings. Because appellant was then, and since childhood had been, a resident of Seattle, and for the preceding thirty years had been a labor leader of national reputation, this area was the focal point for the dissemination of the highly derogatory publicity concerning appellant which resulted from the committee hearings. The local press featured

iPrior to December, 1952, appellant was for many years president of the Western Conference of Teamsters, which covered eleven western states. He maintained his office in Seattle. In December, 1952, appellant became president of the International Brotherhood of Teamsters (a labor union having one and one half million members), which maintained its principal office in Washington, D. C. Thereafter, appellant continued to maintain an office in Seattle and held the official title of president emeritus of the Western Conference.

front-page headlines in large, heavy type, in which the more sensational excerpts from that day's testimony or other proceedings of the committee were flamboyantly displayed. The local radio and television stations carried the same material, and in several instances both media reported the hearings "live" from Washington, D. C.³

On March 26, 1957, and again on the following day, appellant, accompanied by counsel, appeared as a witness before the committee. Upon the advice of counsel, appellant informed the committee that he would assert the privilege against self-incrimination guaranteed him by the Fifth Amendment to the United States Constitution because of the fact that he was currently being investigated for possible violations of Federal law. The committee posed questions to appellant which he refused to answer (on the advice of counsel) on the ground that an answer might tend to incriminate him. He did so a total of one hundred fifty times during the two days of his interrogation by the committee.

On May 2, 1957, appellant was indicted in Tacoma by a Federal grand jury for alleged income-tax evasion.

On May 3, 1957, there appeared on the first page of the Seattle Post-Intelligencer a statement to the effect that the prosecuting attorney had decided to name special prosecutors to assist him in conducting the grand jury proceedings. This article contained the following statement:

"The grand jury is to investigate possible misuse of Teamsters Union funds by international president Dave Beck

On May 8, 1957, appellant was recalled to testify before the Senate Committee, where he was again subjected to a lengthy interrogation, during which appellant again invoked the Fifth Amendment, upon the advice of counsel, approximately sixty times.

An advertisement by a local television station appeared in the newspaper stating that it would report the proceedings of the Senate Committee regarding appellant exclusively "live" on Wednesday, March 27, 1957. The advertisement showed the station was going to devote approximately 9-3/4 hours of that day's programming to both reproductions of the Senate hearings and news comments thereon.

During the course of these proceedings, the committee chairman, its counsel, and some of its members, orally stated certain conclusions and expressed opinions regarding the conduct of appellant. These comments, which were extremely derogatory to appellant, were widely circulated by all news media throughout the United States, and particularly in the Seattle area. In these comments, appellant was characterized as a thief, and it was asserted that he was guilty of fraud and other illegal conduct with respect to his management of the affairs of the teamsters' union as its principal officer in the eleven western states, and later in his position as its international president.

These conclusions and opinions (particularly those expressed by Senator McClellan, the chairman of the committee) were displayed by local newspapers on the front page in prominent headlines. The following are a few of the comments which were referred to in such headlines which appeared in Seattle newspapers:

"TEAMSTERS' CASH KEPT GOING TO BECK AFTER HE BECAME UNION PRESIDENT, SAYS PROBER." Seattle Times, March 23, 1957.

"Beck's Use of \$85,000 May Be Theft, Says McClellan." Seattle Times, March 27, 1957.

"BECK GIVES 'BLACK EYE' TO LABOR, SAYS SEN. McNAM-

ARA." Seattle Times, March 27, 1957.

"Senate Probe Lifts Lid On Beck Beer Business—Use of Union Money Related." Seattle Post-Intelligencer, May 9, 1957.

Substantial portions of the committee proceedings relating to these charges were also reproduced in the course of news broadcasts on local radio and television stations.

The amount, intensity, and derogatory nature of the publicity received by appellant during this period is without precedent in the state of Washington. A Seattle newspaper carried a news item reporting that the switchboard of a local radio station that had broadcast the committee proceedings on the preceding day was jammed with calls, and that the officials of the station characterized the response to the broadcast on the part of the public as "astounding," and that such response was greater than that resulting from

any other broadcast ever aired by them. The serious accusations made by United States senators in the committee hearings are generally regarded by laymen as being official charges (which appellant had refused to answer), and thus the impression was created among the general public that appellant had been found guilty of a crime. The natural effect of this publicity was that, in the eyes of the average citizen, the character of appellant had been thoroughly discredited in the Seattle area on or before May 20, 1957.

In view of the circumstances shown by the undisputed facts stated in the affidavits in this case, I think it would be unrealistic to believe that a very substantial number of the citizens of the community had not adopted, consciously or unconsciously, an attitude of bias and prejudice toward appellant at the time the grand jury was convened. If ever there was a case which required the most stringent observance of every safeguard known to the law to protect a citizen against bias and prejudice, this was it.

On July 30, 1957, appellant (who had been indicted on July 12th) filed a motion to allow him to publish and inspect a transcript of both the grand jury voir dire and the grand jury proceedings. Appellant filed an amended motion on September 16, 1957, supported by his counsel's affidavit, stating on information and belief that the grand jury was prejudiced and biased. On September 20, 1957, the trial court entered an order granting appellant the right to publish and inspect the open court proceedings of the grand jury (i.e. the voir dire and the court's charge):

On October 18, 1957, appellant filed, along with other pretrial motions not pertinent hereto, a motion to set aside and dismiss the indictment. This motion was accompanied by his counsel's affidavit, attached to which was a compilation of photostatic copies of newspaper and magazine articles (total 139 pages) showing the nature and extent of the adverse publicity concerning appellant. On the same day, appellant also filed a challenge to the grand jury upon the grounds

^{&#}x27;Appellant, in so doing, was exercising a right guaranteed him by the United States Constitution. See Hoffman v. United States, 341 U. S. 479, 95 L. Ed. 1118, 71 S. Ct. 814.

"... that the court which impaneled said grand jury made no determination as to whether a state of mind existed on the part of any juror such as would render him unable to act impartially and without prejudice."

All of these motions were argued before the superior court on November 4, 1957, and on November 7, 1957, the court entered an order denying both the motion to set aside and dismiss the indictment and the challenge to the grand jury, but directing that the testimony of Fred Verschueren, Jr., before the grand jury be transcribed, sealed, and retained in the case file, subject to disclosure only in the event of a conviction and subsequent appeal. The state's application to this court for a writ of prohibition to prevent the entry of this order was denied.

In considering the three assignments of error referred to above, I shall discuss (1) the impanelment of the grand jury, (2) the charge given the grand jury, and (3) the alleged misconduct of the prosecuting officers in the examination of a witness before the grand jury.

THE IMPANELMENT

Within five days before the prospective members of the grand jury reported to the court, the Seattle newspapers published articles with these headlines:

"BECK APPARENTLY STOLE \$300,000 FROM UNION, SAYS PROBE AIDE." Underneath this headline is the following statement:

"Labor Probe at a Glance:

"Robert Kennedy, counsel for the Senate Rackets—Investigating Committee, said it would appear that \$300,000 to \$400,000 which Dave Beck 'borrowed' from the Teamsters actually was 'stolen.' (See below.)" Seattle Times, May 15, 1957.

"BECK MISUSED UNION POSITION IN 52 INSTANCES, SAYS PROBER." (There then follows in the body of the article a detailed list of 52 instances of alleged misuse by appellant of his union position.) Seattle Times, May 16, 1957.

"SENATE DOCUMENT CHARGES BECK 'TOOK' \$300,000." Seattle Post Intelligencer, May 17, 1957.

"McClellan Blasts Beck For 'Rascality.'" Seattle Post Intelligencer, May 17, 1957.

The grand jury was impaneled on May 20, 1957. After explaining the general qualifications of grand jurors, the court examined each prospective member as to his or her particular qualifications to act as grand juror. These questions related to the juror's occupation, whether he had ever been a member of the teamsters' union (or any affiliate thereof) or an officer in any union. He was further asked if he were acquainted with any officer of the teamsters' union. One prospective juror was asked if he knew appellant and he replied in the negative. The final question which the court asked each prospective juror was:

"Is there anything about sitting on this grand jury that might embarrass you at all?"

The court excused five prospective jurors and examined five more in the same manner. The seventeen persons then in the jury box were accepted as constituting the grand jury and the court administered the oath to them.

It is to be noted that none of the jurors who were accepted was asked if he had read anything about the alleged activities of the officers of the teamsters' union in the Seattle newspapers or in nationally circulated magazines, particularly those articles relating to the proceedings before the Senate Committee. Neither was any juror asked if he had heard any part of these proceedings on the radio or had seen them "live" on television. Nor was there any interrogation of the jurors had to ascertain whether any of them had heard or participated in any discussions concerning these matters. The general question as to whether the jurors would be embarrassed in any way in sitting on this grand jury was, in my opinion, not sufficient to disclose any bias or prejudice (conscious or unconscious) on the part of the jurors.

[&]quot;Two of the five prospective jurors excused by the court volunteered that they had been prejudiced by reading newspaper articles and seeing television broadcasts. Another was asked if he knew appellant and he replied in the negative. This was the only instance of the court's referring to appellant by name, although the court's later reference to the president of the teamsters' union undoubtedly was understood by the jurors to mean appellant.

In view of the unprecedented publicity which had been given to the Senate Committee hearings within the three months preceding the impanelment of the grand jury, I think that the jurors should have been interrogated for the existence of possible bias and prejudice against the officers of the teamsters' union.

The authorities bearing on this subject will be discussed after I review the court's charge to the grand jury.

THE COURT'S CHARGE

The court explained the historical background and functions of the grand jury, and commented on the fact that it had been used so infrequently in this state that most people, even lawyers, were unfamiliar with its procedure and underlying purposes. The court then outlined the manner in which the grand jury was to perform its functions.

The court stated the reasons for calling this grand jury as follows:

"We come now to the purpose of this grand jury and the reasons which the judges of this court thought sufficient to justify the expense to the county, and the inconvenience to and sacrifice by you, which this grand jury session will

require.

"It seems unnecessary to review the recent testimony before a Senate Investigating Committee except to say that disclosures have been made indicating that officers of the Teamsters Union have, through trick and device, embezzled or stolen hundreds of thousands of dollars of the funds of that union—money which had come to the union from the dues of its members. It has been alleged that many of these transactions, through which the money was siphoned out of the union treasury, occurred in King County. Such crimes, if committed, eannot be punished under Federal law, or under any law other than that of the State of Washington, and prosecution must take place in King County. The necessary criminal charges can only be brought in this county upon indictment by the grand jury or information filed by the prosecuting attorney.

"The president of the Teamsters Union has publicly declared that the money he received from the union was a loan which he has repaid. This presents a question of fact,

the truth of which is for you to ascertain.

"You may find that many of the transactions happened more than three years ago; this would raise the question of the statute of limitations, which ordinarily bars a prosecution for larceny after three years. There are some instances, however, where the period is extended. This is a question of law and you should be guided by the advice of the prosecutors on this and similar questions. Your investigation may conceivably result in the adoption of better standards of conduct for union officials.

"Some other inquiries suggested by the Senate investigation are the relationship between the officers of the Teamsters Union and a certain insurance broker; an alleged conspiracy between business men and Teamster officials in fixing prices; and the influence wielded by Teamster officers through campaign contributions to public officials.

"To completely investigate all of these items may be beyond the energy and endurance of yourselves, the prosecutors and their investigating staff. The financial burden of such a complete investigation may be beyond the resources of King County. I urge you to do all that you can within practical limitations to ascertain the truth or falsity of these charges."

After designating the foreman of the grand jury, the court said:

"Now, members of the grand jury, that is all I have to say to you in the way of a formal charge. I think you all realize that your names have been selected right from the jury list which in turn is picked from the voters' registration books. You have a most serious task to perform and I know you realize it is being performed, and is to be performed, by a grand jury picked at random from among the citizens in this community, and thus we hope to keep the law close to the people. It is a tremendous responsibility, and I wish you well in your work."

The court then introduced the prosecuting attorney, one regular deputy, two special prosecuting attorneys for the grand jury and the official court reporter, and terminated its charge.

While the charge contained this admonition, "Your deliberations are secret and you are forbidden by law to disclose the vote, or even the discussion, on any question before

^{&#}x27;Appellant, in assignment of error No. 27, asserts that unauthorized persons appeared before the grand jury, and contends that the indictment should be dismissed for that reason. In view of the conclusion I have reached on other assignments, I do not find it necessary to discuss No. 27.

you," no warning was given the jurors about refraining from reading newspaper or magazine articles relating to officers of the teamsters' union while they were serving as grand jurors; nor was there any admonition given the grand jurors about not listening to radio or television programs pertaining to the conduct of these officers.

On the afternoon of the day that the grand jury was selected and sworn, two articles appeared in the Seattle Times concerning appellant. The headlines read:

"BECK OUSTED FROM A.F.L.-C.I.O. POSTS—TEAMSTER CHIEF FOUND GUILTY OF 'VIOLATING TRUST.' "Seattle Times,

May 20, 1957.

"Solon Denies Infringing Beck's Rights." ("'May I say that the committee has not convicted Mr. Beck of any crime, although it is my belief that he has committed many criminal offenses.'") Seattle Times, May 20, 1957.

The following morning, the Seattle Post Intelligencer carried this headline:

"McClellan Lays 'Many Criminal' Acts to Beck." Seattle Post Intelligencer, May 21, 1957.

Between that date (May 21, 1957) and July 12, 1957, when appellant was indicted, two nationally circulated weekly magazines published articles entitled:

"THE CASE AGAINST DAVE BECK AS SENATORS SEE IT." U.S. News & World Report, May 24, 1957.

"A CITY ASHAMED—DAVE BECK IS ON SEATTLE'S CON-SCIENCE." Time, May 27, 1957.

I shall now discuss the arguments of counsel relating to assignments of error No. 25 and No. 26.

The motion to set aside and dismiss the indictment was based upon RCW 10.40.070, which provides that an indictment must be set aside when it appears:

"(4) That the grand jury were not selected; drawn, summoned, impaneled, or sworn as prescribed by law."

It is appellant's contention that the grand jury was not impaneled as prescribed by law in that there was no interrogation by the trial court designed to enable it to determine whether or not any juror possessed a state of mind which would render him unable to act impartially and without prejudice. To this is added the further contention that the trial court's charge to the grand jury was prejudicial to appellant.

My examination of the portion of the record relating to these matters convinces me that appellant's contentions are

well taken.

The statutes of this state relating to grand juries clearly demonstrate the legislative intent to adopt the principle that the grand jury must be impartial and unprejudiced.

"No complainant who may institute a prosecution shall be competent to be present at the deliberations of a grand jury, or vote for the finding of an indictment." RCW 10.28.140.

"Challenges to individual grand jurors may be made by such person for reason of want of qualification to sit as such juror; and when, in the opinion of the court, a state of mind exists in the juror, such as would render him unable to act impartially and without prejudice." RCW 10.28.030.

In Watts v. Washington Territory, 1 Wash. Terr. 409, this court, in overruling a challenge to the grand jury proceedings, pointed out that there had been no claim by the defendant that any of the grand jurors were biased or prejudiced.

In State ex rel. Murphy v. Superior Court, 82 Wash. 284, 144 Pac. 32 (1914), we upheld the right of the trial judge to excuse certain prospective jurors and stated:

"That it was the policy of the legislature to preserve the right to have an unbiased and unprejudiced jury and grand jury, and that no suspicion should attach to the manner of its selection in all cases, cannot be questioned. . . ." (Italics mine.)

In State v. Guthrie, 185 Wash. 464, 56 P. (2d) 160 (1936), this court, in denying a motion to quash an indictment, cited the Murphy case, supra, and the above quotation therefrom with approval and discussed the statute now codified as RCW 10.28.030 (quoted above) as follows:

"While this section may be said to relate to challenges made by interested persons, it is not to be construed as denying to the court the right, upon its own motion, to excuse a juror deemed to be disqualified or incompetent. To deny this right would be out of harmony with the policy of the law, which charges the court with the responsibility of insuring that qualified and impartial grand jurors are secured." (Italics mine.)

Thus, our consideration of this case should be based upon the premise that appellant, as a matter of law, was entitled to an impartial and unprejudiced grand jury. Although the state in this case does not take issue with this premise,⁷ the majority holds that appellant is not concerned with anything that takes place before his trial begins.

In my opinion, we should view the circumstances of this case realistically and in a reasonable manner. As I read the record, a consideration of the facts of this case thus viewed can only lead to the conclusion that some, if not all, of the grand jurors had already formed certain unfavorable opinions regarding appellant's alleged conduct.

'The state has filed a comprehensive brief consisting of one hundred fifty pages containing the following answer to appellant's argument regarding his right to an impartial and unprejudiced grand jury:

"Appellant asserts that the denial of his motion to set aside the indictment constituted error under our statutes and constitution and the

constitution of the United States (App. Br. 35).

"Appellant cites : . . [citations omitted]. Except for citing the well-recognized rule that grand juries should be impartial and unprejudiced (App. Br. 37), the cases are not otherwise applicable." (Italics mine.)

At page 48 of the state's brief, it is stated:

"It is patent that the indictment herein was endorsed 'a true bill' and signed by the foreman of the grand jury and that it was presented and marked 'filed' (Tr. 1). Thus, under the statute, the only grounds defendant could raise on a motion to set aside the indictment were those enumerated in subsections (3) and (4) of RCW 10.47.070. It is submitted that none of the other grounds enumerated in defendant's motion to set aside and dismiss the indictment were provided for by our statutes.

"The grand jurors were selected, drawn, summoned, impaneled and sworn as prescribed by law. Defendant in his motions and affidavits made no allegation relating to the selection, drawing, summoning, impanelment and swearing of the grand jury except his assertion that the court took no steps 'to exclude from the grand jury any person or persons who entertained an attitude of bias, prejudice and hostility toward the defendants by reason of knowledge' of purported facts outlined by the defendant in his affidavit 'or by reason of belief or opinion gathered from the widespread circulation of publicity with respect thereto' and 'no steps were taken to instruct or direct the grand jury to ignore or disregard the reports circulated . . . or to disregard any attitude or opinion which they might have formed as a result thereof.' (St. 2140)."

To do otherwise, would seem to be contrary to all human experience. Yet, at no time were any of the prospective jurors asked if they had formed an opinion, and, if so, whether such fact would prevent them from participating fairly in an impartial investigation of the matters later referred to in the court's charge.

Furthermore, no instruction was ever given them as to the legal significance to be attributed to the newspaper statements that appellant had invoked the Fifth Amendment privilege some two hundred fifty times in declining to answer questions before the Senate Committee. Yet, such fact was the subject of much comment in the various news media. As stated in *Grunewald v. United States*, 353 U. S. 391, 1 L. Ed. (2d) 931, 77 S. Ct. 963, 62 A. L. R. (2d) 1344, where the court, in discussing the right to invoke this constitutional privilege, quoted from Griswold, The Fifth Amendment Today:

"Too many, even those who should be better advised, view this privilege as a shelter for wrongdoers. They too readily assume that those who invoke it are either guilty of crime or commit perfury in claiming the privilege."

The failure of the court to interrogate the jurors for the existence of possible bias and prejudice against the officers of the teamsters' union constituted prejudicial error.

The chect of this error was further magnified by the court's charge to the grand jury. The jurors were not instructed to base their deliberations solely upon the evidence presented to them during the course of their investigation. On the contrary, the court's charge seemed to indicate that the so-called disclosures of the Senate Committee were worthy of their consideration. Instead of instructing the jurors that they must wholly disregard the "testimony" before the Senate Committee, the court expressly brought it to their attention, and then stated the substance of the committee's conclusions as to appellant's conduct. Indeed, the language used implied that the court felt that the grand jurors must already be aware of these matters because of the widespread publicity accorded the Senate hearings.

The court stated that the president of the teamsters' union

had publicly stated that the sums received by him from the union were a loan, and that it was the function of the grand jury to investigate this matter and determine the truth in that regard. As stated in *Fuller v. State*, 85 Miss. 199, 37 So. 749:

"... every man, whether accused or not, is entitled to the presumption of innocence until legally convicted. This presumption is binding upon the petit jury, and stands as a witness in favor of the defendant when on trial. It guards him before the grand jury until their investigations have produced proof believed by them which overthrows it. It protects him from the circuit judge in his charge to the grand jury, and forbids that any word from that high station, so apt, on account of its dignity and importance, to influence by its slightest utterance, should prejudice the grand jury when it enters upon the consideration of violations of the law." (Italics mine.)

The last assignment which it is necessary to notice is No. 28, which relates to the alleged misconduct of the prosecuting officers before the grand jury during the examination of the witness, Fred Verschueren, Jr., who was bookkeeper for the Joint Council of Teamsters No. 28.

The testimony of this witness before the grand jury covers one hundred eighty six pages of the record and is too long to paraphrase in this opinion. Suffice it to say that he was subpoenaed and first testified on June 20, 1957, regarding the handling of certain funds. He was excused after completing his testimony on that day.

On July 10, 1957, he voluntarily appeared and asked to correct some errors in his testimony. He said he did so at the suggestion of his own counsel. In his testimony on this occasion he told about having in his custody two envelopes containing currency which he was holding for appellant. He was excused temporarily to go back to his office and bring these envelopes to the grand jury room. He did so, and the contents of each envelope was counted. There was \$3,100 in one envelope and \$3,500 in the other. Included in one envelope were two \$500 bills.

Mr. Verschueren's recollection was rather vague on some details, and his explanations regarding the change in his

testimony since his June 20th appearance irked the three prosecuting officers who took turns cross-examining him.

(1) With prosecution for perjury four times (penalty fifteen years in the penitentiary—"there is no reason for you to go to the penitentiary for somebody else"); (2) invited him to take a lie detector test; (3) threatened to send the envelopes to the Federal Bureau of Investigation to find out if the witness were lying about having sealed and unsealed them. Another instance of badgering this witness was when one of the prosecuting officers said to the witness that he (the interrogator) knew that one could not get a \$500 bill from a teller's window at a bank except by special request, and that "we are going to assume . . . that is correct." At another point, a prosecutor stated to the witness:

". . . nobody in the room [being the grand jury and four prosecuting officers] believes one word you say."

The affidavit of appellant's counsel states on information and belief that there was such loud talking in the grand jury room that it was audible in the hall outside.

The State Grand Jury Handbook, prepared under the auspices of the Section of Judicial Administration of the American Bar Association (1959), states as follows regarding the interrogation of witnesses before grand juries by prosecuting officers or jurors:

"All questioning should be impartial and objective, without indicating any viewpoint on the part of the questioner."

The questioning of the witness Verschueren in this case could hardly be described as objective. Neither was the viewpoint of the interrogator concealed when he attempted "to testify" as to the only possible way to get a \$500 bill at a bank and further stated, in effect, that no member of the grand jury believed a word the witness said.

In order that there may be no assertion that the above described comments on the conduct of the prosecuting officers are not accurate, the pertinent portions of Mr. Verschueren's examination are set forth in Appendix A below.

The functions of a prosecuting officer with respect to the grand jury are limited to the giving of legal advice (upon

request) and the examination of witnesses. Our statute and the decisions from other jurisdictions indicate the scope of these functions and are discussed below.

RCW 10.28.070 provides:

"The prosecuting attorney shall attend on the grand jury for the purpose of examining witnesses and giving them such advice as they may ask."

I do not think that the phrase "examining of witnesses" includes threats, arguments, and comments upon the evidence such as were made in this case. In *United States v. Wells*, 163 Fed. 313, the court, in speaking about the duties of the prosecutor with respect to the grand jury, stated:

"... the provision that the prosecuting attorney may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by them, was meant to confine him to those traditional duties of giving advice concerning procedure and the like, to the examination of witnesses, as expressly provided, and not to the expression of opinions or the making of arguments. ..."

Nor is it proper for the prosecutor to state facts which have no relevancy to the guilt or innocence of the person under inquiry (Attorney General v. Pelletier, 240 Mass. 264, 134 N. E. 407 (1922)); or to pass on the credibility of witnesses (People v. Benin, 61 N.Y.S. (2d) 692, 186 Misc. 548 (1946)); or in any way influence or direct the grand jury in its findings. Williams v. State, 188 Ind. 283, 123 N. E. 209 (1919).

The responsibility of the prosecutor in the trial of a criminal matter is discussed in State v. Case, 49 Wn. (2d) 66, 298 P. (2d) 500 (1956), where we quoted from People v. Fielding, 158 N. Y. 542, 547, 53 N. E. 497 (1899) these words:

"Language which might be permitted to counsel in summing up a civil action cannot with propriety be used by a public prosecutor, who is a quasi-judicial officer, representing the People of the state, and presumed to act impartially in the interest only of justice. If he lays aside the impartiality that should characterize his official action to become a heated partisan, and by vituperation of the prisoner and appeals to prejudice seeks to procure a conviction at all

hazards, he ceases to properly represent the public interest, which demands no victim, and asks no conviction through the aid of passion, sympathy or resentment."

See, also, State v. Reeder, 46 Wn. (2d) 888, 285 P. (2d) 884 (1955), and cases cited therein.

Thus, if it is the duty of the prosecutor to conduct himself as a quasi-judicial officer in a contested criminal trial in the presence of a judge, how much more essential it is that he do so in a secret and uncontested grand jury proceeding before seventeen laymen without the presence of a judge.

The conduct of the prosecuting officers in this case can hardly be characterized as quasi-judicial. Rather it is best described in the following quotation from *United States* v. Wells, supra, which involved a grand jury proceeding:

"... a commendable zeal, which gathered force as it progressed, finally expanded into an exaggerated partisanship wholly inconsistent with the semijudicial duties of a public prosecutor, and entirely unnecessary in the execution of the powers reposed, ..."

The only case I have found which even remotely resembles the one at bar, in so far as it pertains to misconduct of prosecuting officers before the grand jury, is Commonwealth v. Bane, 39 Pa. Dist. & Cy. Rep. 664. There the defendants themselves were the witnesses before the grand jury, and the court quashed the indictment because the investigation was conducted by the Commonwealth's counsel in a prejudicial manner, in that the testimony of the defendants was openly derided and they were denounced as hypocrites and liars and were exhorted to repentance and confession in a highly emotional and dramatic manner, the court stating:

"While it is the duty of the Commonwealth's counsel, as well as his privilege, to attend upon the grand jury with matters upon which they are to pass, to aid in the examination of witnesses, and to give such general instructions as they may require, any attempt on his part to influence their action or to give effect to the evidence adduced is grossly improper and impertinent: . . ."

The difference between the misconduct in the Bane case,

supra, and that before us here is one of degree only. The witness Fred Verschueren, Jr., on his second appearance before the grand jury, was giving testimony favorable to appellant. His credibility was for the grand jury to pass upon without any comment from the prosecuting officers. It could well be that his testimony was disbelieved by the grand jury solely as a result of the conduct of the prosecuting officers as shown in Appendix A.

Whether such conduct, in and of itself, would be sufficient to invalidate the indictment or not, it is not necessary to determine. However, it could only serve to further prejudice the grand jury, and, when taken in conjunction with the other errors previously discussed, deprived appellant of the right to an unprejudiced and impartial grand jury as contemplated by the law of this state.

The errors on the part of the court in impaneling and charging the grand jury were no doubt due, in large part, to the infrequent occasions when grand juries have been called in this state. The court itself commented on this fact in its charge to the grand jury when it said that most people, even lawyers, are generally unfamiliar with grand jury procedure. However, the fact remains that appellant, be he guilty or innocent, was entitled to a fair and impartial investigation of his conduct in accordance with the forms of the law before a valid indictment could be found against him. I am of the opinion that this right was denied him. As the supreme court of the United States said, in *United States v. Hoffman*, 341 U. S. 479, 95 L. Ed. 1118, 71 S. Ct. 814.

"The signal increase in such litigation emphasizes the continuing necessity that prosecutors and courts alike be alert to repress' any abuses of the investigatory power invoked, bearing in mind that while grand juries may proceed, either upon their own knowledge or upon the examination of witnesses, to inquire . . . whether a crime cognizable by the court has been committed, Hale v. Henkel, 201 U. S. 43, 65 (1906), yet 'the most valuable function of the grand jury . . . [has been] not only to examine into the commission of crimes, but to stand between the prose-

During the forty years preceding the calling of this grand jury, there had been only seven grand jury sessions in King county.

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cutor and the accused,' id. at 59. Enforcement officials taking the initiative in grand-jury proceedings and courts charged with their superintendence should be sensitive to the considerations making for wise exercise of such investigatory power, not only where constitutional issues may be involved but also where the noncoercive assistance of other federal agencies may render it unnecessary to invoke the compulsive process of the grand jury."

CONCLUSION

My conclusion, based on the record herein and the decisions hereinabove referred to, is that two rules of law are applicable to the instant case:

- 1. That appellant is entitled to the presumption of innocence at all stages of this proceeding from the impaneling of the grand jury to the close of the trial before the petit jury. This right cannot be denied him because of any proceedings had before the Senate Committee.
- 2. The selection of an unprejudiced and impartial grand jury to determine whether appellant should be indicted or not is just as much an essential part of the law of this state as the selection of an unprejudiced and impartial petit jury impaneled to try him and render a verdict of guilty or not guilty of the offense charged in the indictment.

It is no answer here to argue that the state could have elected to proceed against appellant by information. The fact remains that the grand jury procedure was used. Thus, it was mandatory that the state comply with those statutes, which have been in effect in this state (and territory) since 1854, granting appellant the right to an impartial and unprejudiced grand jury.

This court, in State v. Devlin, 145 Wash. 44, 258 Pac. 826 (1927), defined a fair trial. That definition applies mutatis mutandis to a grand jury investigation. In the cited case, we said:

"The question involved is that of a fair and impartial trial. In State v. Pryor, 67 Wash. 216, 121 Pac. 56, this court said:

"'A fair trial consists not alone in an observation of the naked forms of law, but in a recognition and a just application of its principles.'

"It is the law of the land, a right vouchsafed by the direct

written law of the people of the state. It partakes of the character of fair play which pervades all the activities of the American people, whether in their sports, business, society, religion or the law. In the maintenance of government to the extent it is committed to the courts and lawyers in the administration of the criminal law, it is just as essential that one accused of crime shall have a fair trial as it is that he be tried at all, whether he be guilty or not, has his picture in the rogue's gallery or not. In the *Pryor* case just referred to, it was said that it must be remembered, as stated in *Hurd v. People*, 25 Mich. 404, 'that unfair means may happen to result in doing justice to the prisoner in the particular case, yet justice so attained is unjust and dangerous to the whole community.'"

Despite the public indignation created by the widespread publicity resulting from the senate hearings, appellant was entitled to the same unprejudiced and impartial grand jury investigation as the law of this state guarantees to every citizen whether he be prominent or obscure. For one hundred five years, it has been the duty of our courts, as prescribed by both the territorial and state legislatures, to see that a state of mind does not exist in any prospective grand juror which would render him unable to act impartially and without prejudice. In my opinion, this statutory duty was not performed in this case, and hence the grand jury was not impaneled as prescribed by law.

Before concluding this dissent, I wish to briefly notice certain statements contained in the majority opinion. The majority takes the position that the only statutory provision that grand jurors in this state are required to be impartial and unprejudiced is found in RCW 10.28.010 and RCW 10.28.030, and that these provisions apply only to persons already in custody or held to answer for an offense. The majority opinion then states:

"There was a reason for such a challenge by a 'person in custody or held to answer for an offense,' but the appellant was not such a person." (Italics mine.)

It seems to me that the only reason the legislature granted to a person in custody or held to answer for an offense the right to be investigated by an impartial and unprejudiced grand jury, is that the grand jury's attention had been

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focused upon him from the commencement of its investigation. That is precisely the situation of appellant here. There could not be any doubt in the minds of the prospective jurors that this grand jury had been convened to investigate appellant. As mentioned above, not only did the newspapers announce, less than three weeks before the impanelment, that appellant was to be investigated by the grand jury, but, also, the trial court, in its charge, instructed the grand jury that the president of the teamsters' union had publicly stated that the sums received by him from the union (which the Senate Committee stated were stolen) were loans which had been repaid, and that this issue presented a question of fact for the grand jury to resolve.

I do not understand how it can be said, under the facts shown in this record, that the reason entitling a person in custody or held to answer for an offense to be investigated by an impartial and unprejudiced grand jury, does not apply equally well to appellant. It is axiomatic that all men are equal before the law and are entitled to the same rights under the same or similar circumstances.

The majority opinion continues with the following statement:

". . . When a modern grand jury starts its investigative process it seems ridiculous to suggest that as each new personality comes under scrutiny the proceedings must stop until it can be determined whether any member of the grand jury is biased or prejudiced against him; and, if a grand juror is so biased or prejudiced, the investigation is at an end. . . ."

Our duty is to apply the law to the facts of this case, and the above-quoted statement has no application to appellant. He was not some new personality who had come under the scrutiny of the grand jury during the course of its investigation. Rather, the court made it clear, in its charge, that the primary purpose of convening this grand jury was to investigate his activities as an officer of the teamsters' union. Appellant was a person whose conduct the trial court, in its charge, specifically directed the grand jury to investigate.

The majority further states that there is no showing here of bias or prejudice. My answer is that if, in the face of

all the publicity regarding the Senate Committee hearings described above, anyone realistically could believe that there was no showing of bias and prejudice against appellant at the time of the impanelment of the grand jury, then it is impossible ever for anyone to make such a showing.

But, appellant's complaint is that the grand jurors were never interrogated by the trial court to determine if any bias or prejudice existed. In the absence of such interrogation, appellant necessarily must rely on the facts stated as indicating what such an interrogation would have disclosed as to bias or prejudice. Under the evidence here, it would be wholly unrealistic to presume that the grand jury was unbiased and unprejudiced.

The majority concludes its discussion of the grand jury proceedings with the statement that even if there were sufficient irregularities in the present case to warrant quashing the indictment, appellant could not be prejudiced, since there is no constitutional or statutory right to a grand jury in this state.

Whether or not there is a constitutional or statutory right to a grand jury in this state is, in my opinion, totally immaterial. What is controlling here is the fact that the state elected to proceed against appellant by indictment rather than by information. Therefore, having so elected, the state was bound to comply with the statutes relating to grand jury procedure.

The majority opinion relies chiefly on decisions rendered by Federal courts whose grand juries need not be composed of impartial and unprejudiced jurors, because no statute or rule of court prescribes that qualification. Whether the Federal system or that ordained by the legislature of this state is preferable, is not for this court to declare. Any and all branches of government must comply with applicable constitutional and statutory requirements in the performance of their functions. This includes the grand jury. Until the legislature amends or repeals the statutory law, quoted and emphasized above, it must be applied with equal effect to every person whose conduct is under investigation by a grand jury pursuant to the court's charge to it.

For the reasons stated herein, it is my opinion that the order of the superior court denying appellant's motion to set aside and dismiss the indictment should be reversed and the cause remanded with directions to grant the motion.

FINLEY, ROSELLINI, and HUNTER, JJ., concur with Donworth, J.

APPENDIX A (to dissenting opinion)

Excerpts from examination of Fred Verschueren, Jr., by prosecuting officers before the grand jury July 10, 1957. (All italicized portions are those referred to in the attached opinion.)

"Q. Mr. Verschueren, I want to warn you at this time that you are under oath and that what you say here, if found to be false, can be perjury and you could be guilty of perjury for testifying falsely under oath. A. Yes sir. Q. You are under oath. A. Yes sir. Q. And the penalty for perjury is fifteen years in the penitentiary, it is a felony. A. Yes sir. Q. Now, I want to give you every opportunity to state the truth. . . . Q. You know that. Do you want to tell us when he [appellant] signed this? You still say he signed this in October of '54 when he gave it to you? Do you want to change your testimony or not? A. I don't care to change my testimony. He must have signed it. Q. We want to know the truth. A. I am telling the truth, Mr. _____Q. All right. Mr. _____ asked you about these envelopes. He told you about the penalty for perjury. You are the person that is on the stand, you are the person under oath down here, do you understand that? A. Yes sir. Q. We are concerned with one thing and one thing only, the truth. A. Yes sir. Q. Now, Mr. Beck gave you this envelope in October, 1954, is that your testimony? A. Either that one or the other one, sir. Q. This is Mr. Beck's handwriting, is it not? A. Yes. Q. He handed you this envelope with his handwriting on it at one time and one time only, isn't that true? A. Yes, but it is not necessarily the one he handed me in October of '54. Q. I thought you testified to Mr. it was the first envelope that had Western Conference on it, the other envelope, other material he gave you at a different time. You testified the first envelope he gave you had Western Conference and Joint Council on it. A. I believe so. Q. That is the one he gave you October of '54, isn't that correct? A. Well, you are confusing me now. Q. I am not trying to confuse you, sir. I want you to tell the truth. A. I am telling the truth.

Q. There is no reason for you to go to the penitentiary for somebody else. A. I am not even thinking about that, sir. Q. Well, I am thinking about that, sir. A. I am telling you the truth so far as I know it. Q. Let us know the truth, if you will. This is the envelope you got in October of '54 (indicating) A. I believe that is the one, yes sir. Q. That is your testimony. A. To the best of my recollection, yes Q. Why would he send a check down to you when he had several thousand dollars in cash? He testified as much as \$10,000 in his safe at his own home. Why would he send a check down to you to cash. Maybe you can answer that. A. I couldn't say, sir. Q. Do you want to hazard an answer? It isn't because you are lying, is it? A. No sir. I have cashed, many, many checks for Mr. Beck. Q. Mr. Beck would send his personal checks down to you to cash? Mr. Beck sat on that stand and testified he didn't write two checks a year. A. I said checks made out to him and he would send them down, endorse them. Q. Isn't there a bank right next door to your place of business? A. Yes. Q. But he would send them to you to cash out of some fund in the vault? A. He wouldn't necessarily know I was cashing them out of that fund. Actually I could have cashed them out of the office generally, but there were some circumstances where I couldn't. Q. Mr. Beck testified this morning all his checks were channeled through the B & B Investment Company. That is his testimony this morning, that he never bothered with financial matters, his wife took care of the home and all her expenses and everything else went through the B & B and he wrote maybe two checks a year, he wouldn't even say that many. Is your testimony consistent with that, Mr. Verschueren. A. No. Q. It isn't very consistent, is it? A. I am only telling you what is the truth. Q. You are telling the truth? A. Yes. Q. Are you saying Mr. Beck lied to us this morning? A. No, sir, I wouldn't say so. Q. One of you must be mistaken then, is that correct? When did you talk to Mr. Beck last about your testimony here on the stand? A. I have never talked to him about my testimony on the stand. Q. Have you talked to him about this money in the vault in the last few days? A. No sir. Q. You came in here cold and didn't know what you were going to testify about, is that it? A. I had a fair idea. Q. You haven't talked to Mr. Beck, Sr., in the past several days or several weeks? A. I have talked with him, but not about the money, no sir. Q. You didn't talk about these envelopes in the safe? A. No sir, only that one time. Q. It dovetails pretty well with his testimony, doesn't it, fortunately? A. I don't know, sir.

Q. These checks you cashed for Dave Beck, Sr. How much were they? A. Oh, varying amounts. Not any of them very high. Q. How much? A. Mr. ____, I can't remember all those checks. Q. You are going to be here a long time remembering. You are just starting. When I get through with you Mr. _____ is going to take over again. We don't think you are telling the truth so we are going to stay with you for a while. How much did you cash checks for Dave Beck, Sr. for? . . . Q. Do you deal in \$500 bills? A. No sir, I don't personally. Q. I have never seen one before. This is amazing. Somebody gives you a \$500 bill and you have no recollection of it. You sit there and tell me somebody would give you a \$500 bill and you, wouldn't remember who gave it to you. Is that your testimony? A. If they gave it to me personally? Q. If they came in-if it came into your possession by reason of having cashed a check or something? A. Sir, the amounts are all I count, if I have the proper amount of money. Q. I realize that. Let's not talk about that. Somebody handed you a \$500 bill, didn't they? A. Yes. Q. Who did, and under what circumstances. A. Well, as I say, the odds are Q. Never mind the odds. We are talking about what the facts are. I am not incrested in the odds. What are the facts? Who gave you the \$500 bill? A. It probably came. from the bank, yes. Q. Probably? A. It could have come over the counter. Q. Did you go to the bank and get those two \$500 bills, or didn't you? Did you or didn't you? A. I don't definitely recall, sir, whether I did nor not. Q. You don't know whether you went to the bank and got a \$500 bill or somebody gave it to you. A. Whether it came over the counter, no, I don't sir. Q. You expect these people [the grand jury] to believe you would come into possession of a \$500 bill— . . . Q. You already said you probably went to the bank and got it. A. With the checks I cashed. Q. Why would you ask for a \$500 bill in the bank? A. I probably didn't ask for a \$500 bills, but they may have given me one. Q. You accepted it? A. Yes. Q. You couldn't cash a check with a \$500 bill, when you got it. A. No, sir. Q. Then- A. There was ample funds generally exclusive of this amount then I probably don't think it would make any difference if I had \$1,000. Q. Not what you think now, then, what did you think then when they gave you the \$500 bill and who gave it to you and what went through your mind. Something went through your mind, mister. What went through your mind when you got the \$500 bill and who did you get it from. Tell this jury who you got it from? A. Well, I must have gotten it from the bank, sir, or else it came over the counter in the- Q. Not what must have been done. What did you do? A. I- Q. I don't care about probabilities. How and when did you get it? A. I definitely do not remember, sir, how I came into possession. Q. You want this jury to believe you can get a \$500 bill and don't know the circumstances under which you got it. I am 51 years old and I haven't seen one of them yet. How old are you? A. 36. Q. How many of these \$500 bills have you seen in your life? A. (No response) Q. Well, how many? A. I am trying to think, sir. Q. It isn't very many, is it? A. Yes, considerable. Q. I thought you testified a little while ago you had only seen a few of them. You just got through testifying under oath you had only seen a few of them. Which time are you telling the truth? A. Well, sir, you are getting me so confused- Q. I am confused? A. No, but I am. Q. I don't think the jury is confused. Why should you be confused, you are supposed to be sitting here telling the truth. A. Yes. Q. The truth will never confuse you, never. Where did you get that \$500 bill, two of them. Where did you get them? Under what circumstances and from whom and how? A. They may have been originals- Q. I am not interested in may have been. How did you get them? Tell me when and where? A. I cannot tell you, sir, definitely how I got them. Q. Two \$500 bills and you can't tell how you got them, but you got both by your own testimony in the last three years? A. Yes sir. Q. But you don't know the circumstances. A. No I don't, no. These may be the original bills, sir, I don't know. I don't know. Q. I thought you said you went to the bank and got those bills? A. Just a moment, you said how did I come into possession of them. They may have been in the envelope originally. Q. Are you willing to testify now you. never got those bills, they are the originals? A. No, I can't say that, sir. Q. Is there anything that you can say definitely as you sit here this afternoon? Is there anything you can say definitely? A. Yes sir. Q. It will be a pleasant relief when that happens. . . . Q. Have you ever received a \$500 bill from the bank without making a request for it? They don't keep them in those tills, you know, at all. You can't get a \$500 bill from a teller because they don't keep them there. Did you know that, sir? Did you know that, first. Answer that question. A. They are there if they have come in that day. Q. Did you know they don't keep \$500 bills at all behind those windows. They receive them and take them somewhere else. Did you know that? A. No sir, I did not. Q. You know it now. A. No, I don't. Q. I am telling you now. They don't keep them there. You -- 60

can't get a \$500 bill without making a request for it, or a \$1,000 bill, the most you can get is a \$100 bill. Did you know that? From a teller's window? A. No, I did not know that. Q. We are going to assume, just for the sake of this discussion then, that is correct because I know it to be correct. That is what I have been told by people who know. A. Yes sir. Q. Now, we can get the banker in here and get the same banker you've got out there and I assume he is not an officer of the Western Conference of Teamsters or not a member of your union, is he, the banker out there where you bank? A. Pardon. Q. The bank you go to what bank do you go to? A. Sixth & Denny Branch. Q. Mr. Beck doesn't own that bank, does he? A. Not to my knowledge. Q. Well, assume the banker will come in and tell the truth, can we assume that? A. Yes sir. Q. He will tell us they don't keep \$500 bills in those windows. They don't give them to Fred Verschueren Jr. when he brings in checks, they don't give them to anyone under any circumstancer-unless they ask for them because when you present checks and you want cash the teller always says, 'How do you want it, sir?' Don't they? They always say that to you every time, don't they? A. They sometimes say, 'Sir, do you care how you have it?' . . . Q. Not on the payroll, so you wouldn't get \$500, you wouldn't make that special request at the bank, so how would that \$500 that came over the counter ever get into the envelope? Under what theory could that possibly get in the envelope? That wasn't your practice. You see, you told us your practice this afternoon, because you realized we wanted to see the envelopes, that you never went to them, you never took anything out and then you went to the union hall and came back and your memory was refreshed in the fresh air and you told us you cashed checks and paid payrolls at times with this money, but each time you would put a I.O.U. in there and then you would adjust it later. Go to the bank and get the money and put it back in here. Mr. ... asked you about the \$500 bill and you said you could have gotten it from the bank. We are assuming now, because I know and I think you are pretty well in agreement, that you can't get \$500 bills unless you ask for them at the bank, that you couldn't have got it at the bank, so the only possible way you could have received that \$500 bill is that it is part of the original money that was put in there because you couldn't have got it over the counter, because that isn't your procedure. Nothing you got over the counter could have gone in that envelope. If it could, tell us how. A. Well, I did go through that originally. As I said, I would

take monies from the box and- ... Q. Mr. Verschueren, with reference to this envelope, Exhibit 77, this is the original envelope given to you by Dave Beck in October or November of 1954. This envelope was sealed when you first got it, this is Exhibit 77? A. Yes sir. Q. And you didn't open it again until the early part of 1955. A. Sometime in 1955. Q. Around six months went by before you had occasion to go into it. When you went into it you saw this piece of paper in there. You saw this piece of paper, Exhibit 79 when you opened it with your finger and unsealed it? A. Yes. Q. Then you read the piece of paper. You did whatever you had to do with the money and you resealed it, is that right? A. I am not certain that I resealed it right at that time. Q. But it was resealed when the money was put back in. You always kept these envelopes sealed? A. Not always. Q. You resealed it at that time, after you put the money back, after the first transaction, the first part of '55? A. I won't definitely say I did, no. Q When did you reseal it after the first transaction, the first time you opened it? A. I couldn't tell you as to dates, sir. Q. Approximately when? A few months after? A. I couldn't even approximate. Q. A year or two years after. Did you leave it open or what? You told Mr. this afternoon that you resealed it right after you opened it. This time you say you didn't. Why do you hesitate? A. Well, because I-when you open an envelope innumerable times how do you know which time you sealed it and didn't? Q. You told Mr.you opened the envelope and resealed it. He questioned you at length about opening it with your finger and you would reseal it and then I think he went further and asked you whether or not you used any glue on it and you said no, and still when we have the envelope in this condition, it is stuck very welland you are getting your two \$500 bills back now, don't miss that part on the record. Do I understand you told Mr. _____ you resealed this envelope each time that you opened it? A. Well— Q. Now, you didn't, is that right? A. No, I didn't every time. Did I say I resealed it every time? Q. I don't think you said every time, you said you resealed it the times you opened it and put the money back and resealed it and Mr. was very, very interested, he asked you what kind of glue did you use glue and you said no you didn't. A. I didn't. Q. This must be excellent glue on the Western Conference of Teamsters envelopes because the thing is perfectly sealed now. Understand we can send the envelope to the F.B.I. and determine from them whether or not it has been resealed numerous times, or innumerable times as you said. You were in there in-

numerable times. You understand that, don't you? A. Yes. Q. So if you decide all of a sudden here you are going to tell us the truth—and nobody in the room believes one word you say—you are telling us now that everything you have testified to here today is the truth? A. Yes sir. Q. You have nothing to hide? A. No sir. Q. And you are perfectly willing to undergo any sort of examination to determine if you are telling the truth, is that correct? A. Yes sir. Q. There is nothing at all that is going to stop you from proving what you said? A. No sir. Q. If I tell you now that I have arranged to give you a lie detector test, will you take it? A. I would have to consult my attorney. Q. Yes, that is what I thought, because you are not telling the truth. are you? If you were telling the truth you would have no qualms about taking a lie detector test because a lie detector will not work on a truthful person. It is an exceptionally fine machine, you can't fool it and you are absolutely a perfect subject because you are young and you have your wits about you and you would fail miserably unless you are telling the truth. Will you take the test? A. I have heard differently about the lie detector. Q: Will you take the test? A. No, I will not. Q. You will not. You don't have to consult your attorney do you? You don't want to take any test, do you? A. I will consult him first. Q. But you won't take any test, will you? Will you, now? A. I will consult him first. Q. Yes, that is what I thought.

HUNTER, J. (dissenting)—I dissent. In the instant case, it was not determined that the members of the grand jury were free from bias and prejudice. This is particularly significant in view of the atmosphere that existed toward the appellant in King county at the time the grand jury was impaneled.

One of the most basic concepts of a judicial proceeding is impartiality. This concept was announced as essential to a grand jury proceeding by both the legislature and the supreme court of this state, in the statutes and decisions cited in Judge Donworth's dissent. Under the rule adopted by the majority, a grand jury may be composed of members who are biased and prejudiced. This rule constitutes such grave error that its application will literally shake the foundation of the judicial system of this state.

The grand jury proceedings should be vacated and set aside.

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent,

No. 34636

DAVID D. BECK, also known as DAVE BECK.

ORDER GRANTING ORAL ARGUMENT

Appellant.

Whereas appellant's petition for rehearing is pending before this court; and

Whereas appellant's petition, respondent's answer thereto, and appellant's reply present a constitutional question not heretofore argued orally before this court; now, therefore, a majority of the court agreeing:

IT IS ORDERED:

That oral argument directed solely to the question of the constitutional right of the Supreme Court of this state to permit a criminal judgment and sentence, based upon a jury verdict, to stand when this court is equally divided for affirmance and for reversal, shall be had before this court, sitting En Banc, on Friday, May 27, 1960, at 9:00 a.m.

Dated this 23 day of May, 1960.

BY THE COURT:

(Signed)
FRANK P. WEAVER
Chief Justice

ROBERT HOLSTEIN Clerk

ARCHIE B. STEWART Deputy Clerk

THE SUPREME COURT

State of Washington Olympia

June 14, 1960

Ferguson and Burdell
Mr. Charles S. Burdell
Mr. Donald McL. Davidson
Logan Building
Seattle 1, Washington
Mr. R. V. Welts
Attorney at Law
Mount Vernon, Washington
Mr. John J. Keough
Central Building
Seattle 4, Washington

Mr. Charles O. Carroll
Prosecuting Attorney
Mr. Hugh McGough
Deputy Prosecuting Attorney
602 County-City Building
Seattle 4, Washington
Mr. Charles Z. Smith
410 Norton Building
Seattle 4, Washington

Gentlemen:

Re: No. 34630 The State of Washington

VS.

David D. Beck, also known as Dave Beck.

The Court filed the following Order in this case today:

"This matter came on for rehearing on this day, the court being equally divided on the merits, one judge having disqualified himself, the majority of the court adheres to the Per Curiam opinion heretofore filed.

"Dated this 14th day of June, 1960.

"BY THE COURT:

FRANK P. WEAVER
Chief Justice."

Very truly yours, ROBERT, HOLSTEIN, Clerk

(Signed)
ARCHIE B. STEWART
By Archie B. Stewart, Deputy

ABS:fh

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON,

Respondent,

No. 34636

DAVID D. BECK, also known as DAVE BECK.

ORDER

Appellant.

Appellant having filed, on July 13, 1960, (a) a petition for rehearing and (b) a motion to strike (being a duplication of the petition for rehearing) an order of this court dated June 14, 1960; and the same having been considered by this Court, and more than a majority of this Court agreeing, It is

ORDERED that said petition for rehearing be and the same is hereby denied; it is further

ORDERED that the motion to strike is hereby stricken from the motion calendar.

Dated this 22nd day of August, 1960.

By the Court:

(Signed) FRANK P. WEAVER Chief Justice

Filed in Supreme Court State of Washington '60 AUG 22 PM 1:31 ROBERT HOLSTEIN

Clerk

From Seventeenth Report of Judicial Council of the State of Washington for 1959-60:

RECOMMENDED CONSTITUTIONAL AMENDMENTS

1. Amendment authorizing majority of Supreme Court to call in certain judges for assistance in emergencies.

The court and bar of this State have long been conscious of the necessity for some plan under which the Supreme Court may in times of emergency owing to illness or disqualification, or under the press of special business, appoint additional judges on a temporary basis so that the courts may carry on their business expeditiously and proficiently. The Council has, as shown by earlier reports, given much study to this problem of keeping the courts of this state abreast of its business, so that litigants, both public and private, may not suffer because of delay.

Accordingly, the Judicial Council recommends to the Legislature that Section 2 of Article IV of the Constitution of the State of Washington be amended by adding thereto a new paragraph, to be designated Section 2 (a), as follows:

'When necessary for the prompt and orderly administration of justice, a majority of the Supreme Court is empowered to authorize present judges, retired judges, or former judges of courts of record of this State to perform temporary judicial duties in any court of record in the State.'

500

CHARLES S. BURDELL, being first duly sworn on oath, deposes and says:

That affiant is one of the attoneys for the defendants in the above entitled cases.

For a substantial and continuous period of time prior to and during the proceedings of the Grand Jury there appeared in the public press, and there was broadcast through the media of radio and television, throughout King County, many news resports of an extremely adverse and damaging nature to the defendants herein, and particularly the defendant Dave Beck, many of which reports were and are wholly untrue and unfounded and none of which were based upon any court verdict or judgment. Among these reports there was included a report attributing to persons of national prominence a statement that the defendant, Dave Beck, "stole" certain sums from the labor union of which he is President, and that he engaged in other forms of misconduct. Reports of this nature were continually and repeatedly broadcast throughout King County.

Affiant is advised and believes, and therefore avers, that it is well known throughout King County and elsewhere that such reports, because of their constant repetition and for other reasons, were accepted as true by a substantial portion of the community and that such reports did and must have created extreme prejudice and hostility against the defendants on the part of the Crand Jurors.

And affiant believes and avers that such reports were of such an extreme and bitter nature that the Grand Jury could not possibly have conducted any impartial consideration or investigation of the matter involved in the indictments herein except and unless the Court and Prosecuting Attorney maintained the most strict observance and care with respect to the rights of the defendants to due process and consideration and deliberation of impartial Grand Jurors, and that it is in fact doubtful whether under any circumstances in view of the nature of the aforesaid publicity, any fair and impartial Grand Jury proceeding could have been conducted.

The Grand Jury was empaneled at a critical period during the publicity referred to above; but nevertheless affiant is advised and believes and therefore avers, that in the course of empaneling the Grand Jury the Court made the following statements:

"It seems unnecessary to review recent testimony before a Senate Investigating Committee except to say that disclosures have been made indicating that officers of the Teamsters Union have, through trick and device, embezzled or stolen hundreds of thousands of dollars of the funds of that union. . . . It has been alleged that many of these transactions, through which the money was siphoned out of the union treasury, occurred in King County.

"The president of the Teamsters Union has publicly declared that the money he received from that union was a loan which he has repaid. This presents a question of fact, the truth of which is for you to ascertain."

Affiant believes, and therefore avers, that the aforesaid statements of the Court were erroneous, prejudicial and improper as a matter of law and further that they must and did in fact prejudice the Grand Jurors; and

Affiant further believes and avers that, contrary to the statement of the Court, the question of whether certain sums were or were not loaned was not the "question of fact" the truth of which was or is involved in the charge attempted to be made by the Grand Jurors in the instant cases.

Affiant is advised and believes that at no time in the course of the Grand Jury proceedings did the Court or the Prosecuting Attorney advise or direct the Grand Jurors that they should wholly and completely disregard news reports of the nature referred to above or that they should wholly and completely ignore and disregard any prejudice or attitude of hostility to the defendants by reason of said reports or by reason of the fact that the defendants were under investigation by agencies of the United States, or by reason of the fact that the defendants were officers in a labor union.

Affiant is further advised and believes, and therefore avers, that one of the prospective Grand Jurors expressed a prejudice against labor unions and against the defendant, Dave Beck, but that the Court did not exhaustively and fully determine whether such prejudice would affect the impartial consideration of the Grand Jurors but on the contrary appointed said prospective juror as foreman of the Grand Jury.

Affiant has not interrogated or questioned any witness who appeared before the Grand Jury, although two witnesses have made casual statements to affiant concerning the nature of their interrogation and the attitude of the Prosecuting Attorney; and from these statements and from casual conversations with other attorneys, affiant believes that certain witnesses were threatened, harassed, coerced and intimidated in the course of the Grand Jury proceedings; and that if such conduct did take place, the defendants herein were prejudiced thereby.

Affiant believes that it is his duty, as attorney for the defendants herein, to investigate these matters, and believes that it will be his right and duty to interrogate the witnesses known to have appeared before the Grand Jury if a transcript to the proceedings relating to their testimony is not made available as requested in the attached motions.

Affiant is advised by several persons who observed the conduct of the Grand Jury, that the Prosecuting Attorney, or persons representing or claiming to represent him, attended sev-

eral sessions of the Grand Jury during prolonged periods when no witnesses were being interrogated. Affiant is advised and believes that it is improper and illegal for the Prosecuting Attorney or his staff to urge or direct a Grand Jury to find or return an indictment. Affiant believes it to be his duty to investigate this matter and believes that due process requires consideration thereof.

Affiant is further advised and believes that certain of the attorneys who attended sessions of the Grand Jury were not in fact duly and properly appointed as deputies to the Prosecuting Attorney and that they were therefore unauthorized to attend any proceedings of the Grand Jury, and that their attendance would constitute grounds for setting aside the indictment herein.

CHARLES S. BURDELL

Subscribed and sworn to before me this 16th day of September, 1957.

(Signed)

Notary Public in and for the State of Washington, residing at Seattle.

AFFIDAVIT IN SUPPORT OF (1) MOTION OF CONTINUANCE and (2) MOTION FOR RECONSIDERATION OF MOTION TO STRIKE FROM CALENDAR.

*CHARLES S. BURDELL, being first duly sworn upon oath, deposes and says:

- (1) That he is the attorney for Dave Beck and for Dave Beck, Jr. in the above entitled cases; that he makes this affidavit in support of the motion for continuance in the above entitled cases and in support of the motion for reconsideration of the motion to strike said cases from the trial calendar;
- (2) That the previous steps taken in these cases are as follows:

The indictments herein were returned by a grand jury on or about July 12, 1957. At the date set for the arraignments affiant was absent from Seattle, in Fort Leavenworth, Kansas. Affiant's associate counsel, William Wesselhoeft thereupon moved for a continuance of the arraignment dates. These motions were denied. The defendant Dave Beck was thereupon arraigned on July 26; and the defendant Dave Beck, Jr. was arraigned on July 30. Upon arraignment each of the defendants entered a plea of Not Guilty, but was granted a period of thirty days from the date of arraignment within which to file motions directed against the indictments herein.

After the arraignment, each defendant filed a motion for permission to examine a transcript of the grand jury proceedings, alleging that certain irregularities had occurred in connection with the impanelment of the grand jury and during the proceedings of the grand jury, and stating further that a transcript of the proceedings would be necessary upon which to base motions to set aside the indictments. These motions came

on for hearing before Judge Donald Gaines on August 12, 1957. In the course of this hearing affiant suggested that the motions might best be heard by Judge Lloyd Shorett, who had been in charge of the grand jury. A discussion on this point was then had, particularly considering the fact that Judge Shorett was then on a vacation, and further considering the fact that a delay in determination of this motion might require an extension of time within which the defendant might file motions to set aside the indictment.

In the course of the aforesaid discussion before Judge Gaines, Mr. Laurence D. Regal, Deputy Prosecuting Attorney stated as follows:

"... I think maybe Judge Shorett should hear the matter. Time is not important in this. (Italics supplied).

"No, there is no hurry. I don't think there is that much rush on that [this?] thing."

At the conclusion of the aforesaid discussion, Judge Gaines referred the motion for examination of the grand jury transcript to Judge Shorett, and set said motions for argument before Judge Shorett on Friday, September 13, 1957; and it was further agreed that the time for filing motions to set aside the indictments would be extended for a reasonable period after the argument and ruling on said motions;

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AFFIDAVIT

STATE OF WASHINGTON)

88.

COUNTY OF KING

CHARLES S. BURDELL, being first duly sworn on oath, deposes and says:

That he is the attorney for each of the defendants in the above entitled cases;

That this compilation consists of newspaper and magazine articles, and references to television telecasts; that the newspaper articles were selected from the Seattle Times and from the Seattle Post-Intelligencer; that these are the only two daily newspapers of general circulation in King County; that the compilation was assembled at the direction of affiant and that all articles are accurate reproductions of or references to news reports; that the circulation of the Post-Intelligencer in King County is approximately 133,000; that the circulation of the Times in King County is approximately 180,000;

That in addition to normal circulation, copies of said newspapers are prominently and regularly displayed at newsstands throughout Seattle at locations where the general public will—observe and read the large type headlines printed on the first page of said newspapers; that affiant has personally observed many persons pause to read headlines concerning the defendants herein, and has heard many persons, on doing so, make remarks indicating that they accept as true the reports appearing in said news reports and/or headlines;

That in addition to being circulated in King County, the aforesaid newspapers are sold and distributed in other towns and cities throughout the State of Washington, including, but not limited to, the cities of Bellingham, Everett, Tacoma, Olympia, Vancouver, Yakima, Wenatchee, Spokane, Pasco, Kennewick, Richland and Bremerton;

That the magazine articles included in the aforesaid compilation are selected from magazines having wide circulation throughout the United States, and throughout the State of Washington;

That the attached compilation does not include all newspaper reports and magazine articles written and distributed in the State of Washington concerning the defendants herein; that this compilation is illustrative only; that there were thousands of

additional and similar reports published in the Seattle Post-Intelligencer, the Seattle Times, and in other daily newspapers published in and circulated throughout the State of Washington; that of the thousands of such articles and reports affiant knows of none which suggest that opinion be reserved pending trial of charges against the defendants;

That simultaneously with the circulation of such newspaper reports and magazine articles there were continual broadcasts and telecasts throughout the State of Washington and particus larly in the Seattle-Tacoma Area of reports similar in nature and content to the reports and articles contained in the attached compilation; that such broadcasts and telecasts were often repeated several times daily; that practically all of such reports were adverse to and disparaging of the defendants herein; that, as an illustration, during the period from May until the date of this affidavit, the defendant Dave Beck was characterized in said reports as dishonest, as a racketeer, and as a person who "stole" money from and otherwise defrauded the labor union of which he was president; that to affiant's knowledge no broadcast or telecast suggested that opinion should be reserved until trial of the charges against the defendants herein; that publicity of the type referred to herein has been so constant and repetitious throughout the country and throughout the State of Washington, and particularly in King County, that it is referred to as "saturation" coverage—that is, news coverage designed, by one or another media of news transmission, to reach the maximum proportion of persons in a given community; that it is well known in public relations and advertising professions that the repeated dissemination of such reports strongly tends to persuade the general public that such reports are true: that affiant is advised and believes, and therefore avers, that a tremendous proportion of the population of the State of Washington, and particularly of King County, does believe these reports to be true:

That many of the reports, articles, broadcasts and telecasts

included in the attached compilation, together with many which are not included, related to hearings before a special United States Senate Committee; that this Committee caused many of these hearings to be broadcast and telecast; that pursuant thereto there was broadcast and telecast throughout the State of Washington during the months of April and May 1957 much "testimony" of a nature bitterly hostile and adverse to the defendants; that this "testimony" was not limited by rules of evidence and was not subject to cross-examination; that films of these hearings were made and flown immediately to the Seattle-Tacoma Area for telecast, at hours selected for maximum observance throughout Western Washington;

That in the course of the aforesaid hearings both of the defendants herein were required to appear; that at the time of such appearances the said defendants were being investigated by other agencies of the United States; and that, upon the advice of their attorneys both of said defendants exercised the privilege accorded to them under the 5th Amendment to the Constitution of the United States and refused to testify; that reports of such refusals were widely circulated throughout the State of Washington, particularly in King County, by means of news reports, broadcasts and telecasts; that in the course of these proceedings certain members of the aforesaid committee expressly and by clear implication indicated that anyone who claims or asserts privilege is guilty of something; that a study released by the American Institute of Public Opinion, on or about May 9, 1957, indicates that most Americans believe that anyone who asserts privileges under the 5th Amendment is guilty of something;

That in Volume No. 37 of Congressional Quarterly, for the week ending September 13, 1957, there is a report of a survey to determine the issues of greatest importance throughout the country; that the report states that the issue sixth in importance is "Labor union corruption and ways of regulating it"; that the aforesaid Congressional Quarterly is privately published at

1156 Nineteenth Street, N.W., Washington, D. C., but is an authoritative and accepted publication devoted to national issues and governmental activities;

That affiant has consulted with approximately fifty members of the Bar in Seattle and elsewhere in the State of Washington; that none of said attorneys have any connection with or obligation to either of the defendants herein; that without exception all of said attorneys have stated that in their opinion it would be impossible for either of the defendants to be accorded a fair and impartial trial in this jurisdiction or in any jurisdiction within the State of Washington at the present time or in the near future.

(Signed)
CHARLES S. BURDELL

SUBSCRIBED and SWORN to before me this 30th day of SEPTEMBER, 1957.

(Signed)

Notary Public in and for the State of Washington, residing at Seattle.

AFFIDAVIT

CHARLES S. BURDELL, being first duly sworn on oath, deposes and says:

That he is the attorney for the defendant in the case of State of Washington v. David D. Beck, No. 30967, and for the defendant in the case of State of Washington v. Dave Beck, Jr., No. 30966;

That on September 21, 1957, at about 5.25 p.m., affiant heard and saw a program telecast from Station KTNT-TV; that said program consisted of an interview of two attorneys who purported to represent certain members of the Teamsters Union in legal proceedings to enjoin or delay an election for the presidency of said Union; that in the course of said interview, referring to the Teamsters Union and its present officers, one of said attorneys stated in substance that pressure was being built up against "dishonest" union leaders; and that referring to the same Union and its officers, the same attorney used the terms "goons" and "racketeers";

That said interview, in its entirety, was repeated on Friday, September 27, 1957.

That station KTNT-TV is one of three television stations which are widely heard and observed in the Seattle-Tacoma area; that telecasts emanating from KTNT-TV, including news and interview programs, are generally heard and observed by many thousands of persons in Pierce and King counties, State of Washington.

(Signed)
CHARLES S. BURDELL

SUBSCRIBED and SWORN to before be this 30th day of September, 1957.

(Signed)

Notary Public in and for the State of Washington, residing at Seattle.

AFFIDAVIT

STATE OF WASHINGTON)

* S5.

COUNTY OF KING

CHARLES S. BURDELL, being first duly sworn upon oath, deposes and says:

That he heard and saw the program "Meet the Press" as telecast over station KING-TV on Sunday, September 22, 1957; that he is advised and believes and therefore avers that said program is widely and extensively viewed by families in King County and elsewhere.

That said program consisted of an interview with James Haggerty, an announced candidate for President of the International Brotherhood of Teamsters.

That in the course of said interview questions were asked which included the assertion as a fact that Dave Beck had "mishandled funds" and had "brought the Teamsters Union into disrepute."

(Signed)
CHARLES S. BURDELL

SUBSCRIBED and SWORN to before me this 30th day of SEPTEMBER, 1957.

(Signed)

Notary Public in and for the State of Washington, residing at Seattle.

MOTION FOR CHANGE OF VENUE

NOW COMES the defendant, DAVID D. BECK, also known as Dave Beck, by and through his attorney, Charles S. Burdell, and respectfully moves that the venue of the aforesaid action be transferred and removed from King County, State of Washington, to Whatcom County, State of Washington, or Snohomish County, State of Washington, on the ground that it is and will be impossible for said defendant to obtain a fair, impartial trial in King County by reason of hostility and prejudice against the defendant existing among and throughout the population of King County.

This Motion is based on the files and records herein and on the affidavit of Charles S. Burdell attached hereto and made a part hereof.

(Signed)
CHARLES S. BURDELL
Attorney for Defendant

1

AFFIDAVIT IN SUPPORT OF MOTION FOR CHANGE OF VENUE

CHARLES S. BURDELL, being first duly sworn, on gath, deposes and says:

That he is one of the attorneys for the defendant herein; that he has previously filed affidavits and exhibits in this case illustrating and referring to newspaper reports and other publicity media which have resulted in hostility and prejudice towards the defendant herein among and throughout the population of King County, State of Washington.

That affiant is advised and believes, and therefore avers, that similar publicity has been circulated and distributed throughout the State of Washington, and throughout the United States, and that there exists throughout said State and throughout the United States an attitude and atmosphere of extreme hostility and prejudice towards the defendant, but affiant is further advised and believes, and therefore avers, that such hostility and prejudice is less extreme and less intense in the counties of Whatcom and Snohomish, State of Washington, because there is only one television station located in Whatcom County, and none located in Snohomish County, and that television signals from stations located in King County reach a smaller proportion of the communities of Whatcom and Snohomish Counties than of King County; that newspapers published in King County have emphasized and prominently displayed newspaper reports of an adverse and disparaging nature to a greater degree than have newspapers published in Snohomish County and Whatcom County.

That affiant has observed and is advised, and therefore avers, that jury panels selected in King County, if not invariably, include employees of the Boeing Airplane Company; that within recent years there has been a bitter jurisdictional dispute be-

tween the International Brotherhood of Teamsters and Aeromechanics Union concerning the right to represent employees of the aforesaid company; that affiant is advised and believes, and therefore avers, that said dispute has resulted in an attitude of bitterness, prejudice and hostility among employees of the aforesaid Boeing Airplane Company against officers and representatives of the International Brotherhood of Teamsters, including the defendant herein.

That in view of the foregoing circumstances, and other exhibits and affidavits on file in the above entitled case, affiant believes and therefore avers that although an attitude of hostility and prejudice against the defendant exists throughout the State, such attitude is less extreme and intense in Whatcom County and Snohomish County.

(Signed)
CHARLES S. BURDELL

SUBSCRIBED and SWORN to before me this 3rd day of OCTOBER, 1957.

(Signed)

Notary Public in and for the State of Washington, residing at Seattle.

AFFIDAVIT IN SUPPORT OF MOTION TO SET ASIDE AND DISMISS INDICTMENT

CHARLES S. BURDELL, being first duly sworn on oath. deposes and says that:

He is one of the attorneys for David D. Beck, also known as Dave Beck, and Dave Beck, Jr., defendants in the above entitled cases; and that he makes this affidavit in support of the motion of the aforesaid defendants to set aside and dismiss the indictments in the above entitled cases.

On or about February 26, 1957, a committee of the United States Senate commenced to conduct public hearings allegedly involving a relationship between the International Brotherhood of Teamsters and certain of its affiliated and subsidiary organizations, and certain alleged racketeers and criminal elements at Portland, Oregon;

Thereafter, continually until through September, 1957, the aforesaid committee held and conducted investigations and public hearings purportedly relating to alleged improper, dishonest and fraudulent activities by and among labor union officers.

In the course of the aforesaid hearings, many accusations of an adverse, disparaging and denunciatory nature were made against the defendants herein, and particularly against the defendant Dave Beck. Some of the accusations were made by members of the aforesaid United States Senate Committee, including particularly its chairman, Senator John McClellan, and by its chief counsel, Robert Kennedy; and in the course of said hearings, the aforesaid chairman issued and published a list of 52 specifications of alleged misconduct on the part of the defendant Dave Beck. Included also among the aforesaid accusations reported to have been made by the aforesaid chairman was the charge that the defendant Dave Beck "stole" sev-

eral hundreds of thousands of dollars from the International Brotherhood of Teamsters.

The aforesaid accusations made by the United States Senate Committee were based upon alleged "evidence" and "testimony," some of which was elicited in public in the course of the aforesaid proceedings, but none of which was subject to cross-examination by the defendants, or either of them, and none of which was subject to the rules of evidence normally applicable in judicial proceedings in courts of the United States or the State of Washington.

During the aforesaid period, from February 26, 1957throughout the month of September, 1957, representatives of the aforesaid United States Senate Committee, including particularly the chairman and chief counsel thereof, issued and published to the press and to other news media many statements and accusations of a denunciatory nature toward these defendants, many of which were not an integral part of the investigation or hearings of the aforesaid committee or necessary to its conduct or functions; and representatives of the said committee assisted, cooperated and conferred with law enforcement agencies of the State of Washington with respect to matters exclusively within the jurisdiction of said state, and otherwise engaged in conduct not necessary or a part of the purpose and function of the aforesaid committee, and all of which were designed, intended and permitted to be circulated, by various publicity media, throughout the United States, and particularly throughout the State of Washington, and to create, and which did create, an attitude of intense and extreme bias, prejudice and hostility toward these defendants within the jurisdiction of this Court and elsewhere throughout the United States.

The effect and result of the aforesaid conduct is partially illustrated and demonstrated in a compilation of newspaper reports and articles referred to hereinafter. Included among such conduct are the following, among other instances:

Affiant is advised and believes, and therefore avers, that the chief counsel of the aforesaid Senate Committee, on or about April 11, 1957, conferred with Charles O. Carroll, prosecuting attorney in and for King County, State of Washington.

Affiant is advised and believes, and therefore avers, that on or about April 12, 1957, the chief counsel of the aforesaid. Senate Committee reported or stated to Governor Albert Rossellini that prosecution of officers of the International Brother hood of Teamsters must be based upon state law because there was no applicable Federal law.

Affiant is advised and believes, and therefore avers, that on or about April 14, 1957, the chief counsel of the aforesaid Committee and Charles O. Carroll, the prosecuting attorney in and for King County, State of Washington, conferred by telephone concerning obtaining a transcript of the hearings of the aforesaid Senate Committee and concerning the possibility of an investigation under state laws of officers of the International Brotherhood of Teamsters; and on or about April 14, 1957, the prosecuting attorney of King County, State of Washington, is reported in the SEATTLE TIMES to have stated to a representative or representatives of said newspaper that he discussed with the aforesaid chief counsel of the Senate Committee whether or not state action involving the defendant herein was advisable.

Affiant is advised and believes, and therefore avers, that on or about April 14, 1957, a conference was held between Charles Smith, a deputy prosecuting attorney in and for King County, and Carmen Bellino, and investigator for the aforesaid Senate Committee.

Affiant is advised and believes, and therefore avers, that on or about April 14, 1957, the chief counsel of the aforesaid Senate Committee stated that documentary evidence concerning officers of the International Brotherhood of Teamsters would

be furnished to the prosecuting attorney in and for King County, State of Washington.

On or about April 26, 1957, the chief counsel of the aforesaid Senate Committee stated that the Committee would assist the grand jury sitting in and for King County, State of Washington; and the chief counsel of the aforesaid Senate Committee is reported to have stated that he had confidence in the prosecuting attorney in and for King County.

Affiant is advised and believes, and therefore avers, that on or about May 16, 1957, the chief counsel of the aforesaid Senate Committee and Senator John Kennedy, a member of said committee, made comments concerning the absence of said statutes relating to the embezzlement of union funds and concerning the statute of limitations applicable in the State of Washington with respect to the crime of embezzlement.

Affiant is advised and believes, and therefore avers, that on or about June 23, 1957, Charles O. Carroll, the prosecuting attorney in and for the County of King, State of Washington, stated that the statute of limitations in the State of Washington prevented prosecutions based upon the investigations of the aforesaid Senate Committee.

On or about June 3, 1957, representatives or alleged representatives of the prosecuting attorney in and for King County stated to representatives of newspapers that defendant Dave Beck, Jr., was given an opportunity of explaining events which had previously been submitted to the grand jury, but that he declined the privilege of explaining and was excused by the grand jury.

On or about July 10, 1957, the prosecuting attorney in and for King County stated to representatives of the press that defendant Dave Beck, Sr., testified freely before the grand

jury but that his testimony was limited and confined as to subject matter.

At the outset of his appearance before the aforesaid Senate Committee on March 26, 1957, the defendant Dave Beck was accompanied by counsel; and upon advice of his counsel, the said defendant refused to respond to many questions, asserting the privilege guaranteed to him by the Fifth Amendment to. the Constitution of the United States. In asserting said privilege, the defendant explicitly stated to the Committee that his refusal to answer these questions was based upon nation-wide newspaper, radio and television accounts of the proceedings and upon proposed criminal actions against him for alleged violations of Federal laws. Nevertheless, after being so informed, the aforesaid United States Senate Committee repeatedly and continuously, during the course of the proceedings, posed questions to the defendant Dave Beck, which, upon advice of counsel. he refused to answer. The said committee caused or permitted these proceedings to be televised and broadcast by and through television and radio networks throughout the United States and said telecasts and broadcasts were transmitted over and by television and radio stations in Seattle, Washington, and were observed and heard by large portions of the population within the jurisdiction of this Court.

On May 2, 1957, a grand jury, acting in and for the United States District Court for the Western District of Washington. Southern Division, returned an indictment against the defendant Dave Beck in two counts, charging violation of Federal income tax laws.

That among the proceedings which the aforesaid United States Senate Committee caused or permitted to be broadcast and televised and otherwise reported, there was included the proceedings at which Dave Beck and Dave Beck, Jr., upon advice of counsel repeatedly asserted and claimed the privilege guar-

anteed to them by the Fifth Amendment; the said proceedings were reported, telecast and broadcast throughout the United States in newspapers and on television and radio networks, including newspapers circulated among, and upon television and radio programs observed and heard by, a large proportion of the population and community within the jurisdiction of this Court.

All or most of the aforesaid events, including statements to the press by the prosecuting attorney in and for King County and by representatives of the aforesaid United States Senate Committee, have been reported prominently in newspaper and magazine articles and upon television telecasts and radio broadcasts. The compilation consisting of newspaper and magazine articles and references to television telecasts are illustrative of the adverse and denunciatory reports circulated concerning these defendants throughout the jurisdiction of this Court and elsewhere. Many of these articles were printed in the SEATTLE TIMES and in the SEATTLE POST-INTELLIGENCER. Each of these newspapers has wide and general circulation throughout the jurisdiction of this Court. The aforesaid compilation was assembled at the direction of affiant and all articles contained therein are accurate reproductions of or references to news reports.

The magazine articles contained in said compilation (with the possible exception of the magazine SIR) were selected from magazines having wide national circulations and wide and general circulation throughout the jurisdiction of this Court.

In addition to normal circulation to subscribers and other purchasers, copies of the aforesaid newspapers were prominently and regularly displayed at news-stands in Seattle and in other cities within the jurisdiction of this Court at locations where the general public would observe and read the large-type headlines printed on the first page of said newspapers.

The aforesaid compilation does not include all newspaper

reports and magazine articles written and circulated concerning the defendants within the jurisdiction of this Court. The compilation is illustrative only and there were many additional and similar reports published in and circulated throughout the jurisdiction of this Court. Of the thousands of such articles and reports, affiant knows of none which suggest that opinion of the community concerning the guilt or innocence of these defendants should be reserved pending trial of the charges which have been made against them.

The proceedings of the aforesaid grand jury commenced on or about May 20, 1957; and the prosecuting attorney in and for King County designated two prominent Seattle attorneys, including a former mayor of Seattle and a vice-president of the Seattle Bar Association, to conduct or assist in the conduct of the grand jury proceedings. Considerable publicity attended the conduct of these proceedings, such publicity including reports concerning the selection of the aforesaid two attorneys, appearances before the grand jury of Dave Beck and Dave Beck, Jr., appearances of other employees of representatives of the International Brotherhood of Teamsters and its affiliated organizations, statements of the prosecuting attorney, a request or recommendation to the United States District Judge by the Chairman of the aforesaid Senate Committee recommending a denial of an application made by Dave Beck to leave the jurisdiction of the aforesaid United States District Court: and other instances and conduct referred to herein and illustrated in the compilation of news reports referred to above.

Affiant is advised and believes, and therefore avers, that many sessions of the grand jury, during the course of which testimony was elicited, were attended and conducted by the prosecuting attorney in and for King County, and by Laurence Regal, a deputy prosecuting attorney in and for the aforesaid County, and by William O. Devin and Victor Lawrence, the attorneys designated as aforesaid to appear in and conduct the aforesaid grand jury proceedings. Affiant has been advised by

witnesses who appeared before said grand jury that sessions of the grand jury were conducted in an intemperate manner and that in connection with testimony relative to the subject of the indictment herein favorable to the defendants, they were expressly and impliedly charged in the presence of the grand jury with concealing facts and falsely stating facts.

The aforesaid William O. Devin and Victor Lawrence attended most or all of the sessions of the grand jury during which testimony was given. Said attorneys were designated by the prosecuting attorney to perform services in connection with this particular grand jury investigation, and for no other purpose connected with or for the office of the prosecuting attorney. There was, to affiant's knowledge, no order or appointment of the aforesaid attorneys as "special" prosecutors by the Court, and the file of the Clerk of this Court relating to the grand jury proceedings contains no such order. Affiant is advised and believes, and therefore avers, that each of the aforesaid attorneys continued to engage in the private practice of law during all or a portion of the period of their service in connection with the said grand jury proceedings. Affiant is also advised and believes, and therefore, avers that each of the aforesaid attorneys were paid for their services from a special fund appropriated or allocated by the Commissioners of King County specifically for use in connection with the conduct of the proceedings of the aforesaid grand jury. Affiant is also advised and believes, and therefore avers, that upon the return of the indictments referred to hereinafter, both of said attorneys discontinued performance of any services or duties in and for the office of the prosecuting attorney.

On July 12, 1957, the aforesaid grand jury, acting in and for the County of King, State of Washington, returned an indictment against Dave Beck, consisting of one count, charging the said Dave Beck with the crime of Grand Larceny; and on the same date, said grand jury returned an indictment against Dave

Beck, Jr., consisting of two counts, charging, in each count thereof, the crime of Grand Larceny.

After the return of the indictment herein, the grand jury caused to be filed in the office of the Clerk of this Court, in a file which is open to and available to the public, and which has appeared in part in newspapers of wide circulation in the Seattle area, namely, the SEATTLE TIMES, dated July 12, 1957, and the SEATTLE POST-INTELLIGENCER, dated July 13, 1957, a mimeographed report and recommendation signed and purportedly prepared by the members of the grand jury, and that said report and recommendation is attached hereto and made a part hereof by this reference as though set forth in full.

Both before and after the return of the indictments, the King County Prosecuting Attorney, Charles O. Carroll, issued statements to the press praising the efforts of Mr. Lawrence and Mr. Devin who were purportely appointed as assistant prosecuting attorneys for grand jury purposes. These statements said that both had extensive private practices and had done or are now doing this work at great personal sacrifice to themselves.

Affiant is advised and believes, and therefore, avers, that in connection with the qualification, selection and impanelment of the grand jury, and at all times throughout its proceedings, no steps were taken to exclude from the grand jury any person or persons who entertained an attitude of bias, prejudice and hostility toward the defendants by reason of knowledge of the aforesaid facts or by reason of belief or opinion gathered from the widespread circulation of publicity with respect thereto, and no steps were taken to instruct or direct the grand jury to ignore or disregard the reports circulated, as referred to above, or to disregard any attitude or opinion which they might have formed as a result thereof; except, however, affiant is advised that an oath was given to the members of the grand jury, at

the time of impanelment thereof, but affiant is not presently advised as to the nature and content thereof.

(Signed)
CHARLES S. BURDELL

SUBSCRIBED and SWORN to before me this 17th day of October, 1957.

(Signed)

Notary Public in and for the State of Washington, residing at Seattle.

Volume X, Statement of Facts, page 2343

CHARLES S. BURDELL, being first duly sworn on oath, deposes and says:

That he is the attorney for the defendant herein and that he makes this affidavit in support of the defendant's challenge to the entire panel as follows:

That affiant is advised and believes, and therefore avers, that a set of written instructions has been delivered to all or any members of the jury panel; that members of the panel have read said instructions and have discussed said instructions among and between themselves; that affiant has personally observed members of the panel reading and discussing said instructions;

That said instructions included erroneous and improper statements which are prejudicial to the defendant herein and will impair his right to a fair and impartial jury;

That affiant was present at the interrogation of the prospective jurors in the case of State of Washington vs. Dave Beck, Ir., and conducted said interrogation on behalf of defendant; that there were forty jurors selected as prospective jurors in said case; that the thirteen who were finally selected as jurors, and alternate jurors, were permanently excused at the conclusion of the trial in the State of Washington vs. Dave Beck, Jr.; that the remaining jurors were present in the course of the interrogations, and have not been excused and are presently included on the panel; that in the course of said interrogations it was revealed that the defendant herein had been the subject of charges of improper and unlawful conduct by a United States Senate Committee and by others; and that it was also revealed that the defendant herein had been the subject of any hostile and prejudicial remarks and discussions throughout the jurisdiction of this court. That affiant, on behalf of the defendant. Dave Beck, Jr., who is the son of defendant herein, exercised seven peremptory challenges in the course of selection of the

jury, and that the jurors so challenged remained on the panel for the trial of the case herein;

That during the course of the trial of State of Washington v. Dave Beck, Ir., there were constant newspaper, television and radio reports concerning the course of the trial, many of which were hostile and prejudicial to the defendant and indicated that the defendant had committed a wrongful and unlawful act or acts; that some, but not all, of the aforesaid newspaper reports are included in the file herein; that said reports were circulated prominently and to an extensive degree throughout the jurisdiction of this court; and included large type headlines in the newspapers and many have come to the attention of the members of the panel herein;

That present members of the panel, including those present at the aforesaid interrogations and those who were the subject of peremptory challenge, were permitted to confer among themselves freely during the trial of the aforesaid case of State of Washington vs. Dave Beck, Jr.; that said case was the most prominent and publicized case which has been tried during the entire term of the present jury panel, and one of the most, if not the most, publicized case which has been tried within the jurisdiction of this court for many years.

Affiant also incorporates herein the records, affidavits and exhibits heretofore filed relating to and demonstrating the conduct of the Prosecuting Attorney, of the Grand Jury, proceedings relative to the impanelment of the Grand Jury; and affiant also incorcorates herein by reference affidavits and exhibits relative to publicity circulated throughout the jurisdiction of this Court relative to and concerning the defendant.

(Signed)

CHARLES S. BURDELL

SUBSCRIBED and SWORN to before be this 2nd day of December, 1957.

(Signed)

Notary Public in and for the State of Washington, residing at Seattle.

Volume IX, Statement of Facts, page 2196

MOTION FOR SUBPOENAS

COMES NOW the defendant herein and respectfully applies for an order permitting the defendant to subpoena Mr. William F. Devin, 1310, 1411 Fourth Ave. Bldg., Seattle 1. Washington. and Mr. Victor D. Lawrence, 610 Fourth & Pike Bldg. Seattle 1, Washington, for the purpose of obtaining their testimony in pre-trial proceedings, at a time and place to be designated by the court, for the purpose of eliciting testimony from said witnesses concerning (1) whether or not either or both of said witnesses were engaged in private practice of law during the period when they were engaged in attendance upon the sessions of the Grand Jury which returned the indictment herein, or were otherwise engaged in performing legal services in connection with the investigation of said Grand Jury; and (2) the conduct of attorneys who appeared before said Grand Jury in the course of the presentation of testimony and evidence thereto.

And the defendant further applies for an order permitting defendant to subpoen Jack Stratton, 3515 West 68th, Seattle, Washington, and Fred Verschuren, Jr., Teamsters Building, Fifth and Denny Way, Seattle, Washington, for the purpose of obtaining their testimony in pre-trial proceedings, at a time and place to be designated by the Court, for the purpose of eliciting testimony from said witnesses concerning the conduct of attorneys who appeared before said Grand Jury in the course of the presentation of testimony and evidence thereto.

This motion is based upon the files and records herein, including affidavits of Charles S. Burdell and W. Wesselhoeft, relating to their information and belief concerning conduct of the Grand Jury proceedings.

Dated this 4th day of November, 1957.

(Signed) .
CHARLES S. BURDELL
Attorneys for Defendants

Volume IX, Statement of Facts, page 2197

CHARLES S. BURDELL, being first duly sworn on oath, deposes and says:

That William F. Devin and Victor D. Lawrence attended sessions of the Grand Jury prior to June 18, 1957.

That affiant is also advised and believes, and therefore avers, that the aforesaid William F. Devin and Victor D. Lawrence were engaged in the private practice of law throughout the period of time when they appeared before and performed services in connection with the Grand Jury and the Grand Jury proceedings; that affiant believes that this fact constitutes grounds for setting aside the indictment herein; that he desires to interrogate the aforesaid persons with respect to this subject.

That affiant believes that conduct which took place during the interrogation of the witnesses Jack Stratton and Fred Verschuren, Jr., before the Grand Jury constitutes grounds for dismissal or setting aside of the indictment herein, and that affiant desires to interrogate all of the witnesses named in the attached motion with respect to said conduct.

Affiant further certifies that in his opinion the testimony of the aforesaid witnesses is material to the defense in this case, with particular respect to the validity of the Grand Jury proceedings and the validity of the indictment.

(Signed)
CHARLES S. BURDELL

SUBSCRIBED and SWORN to before me this 4th day of November, 1957.

(Signed)

Notary Public in and for the State of Washington, residing at Seattle.

From Volume VIII of Statement of Facts:

p. 1979:

"SENATOR McCLELLAN SEES UNION, VICE TIE-UP"

Seattle Post-Intelligencer, March 3, 1957.

p. 1980:

"BAD DAYS FOR DAVE BECK"

Life Magazine, March 11, 1957.

p. 1982:

"BECK REPAID TEAMSTERS \$270,000 AFTER TAX INVESTIGATION BEGAN, PROBER TESTIFIES"

"NO RECORDS FOUND OF ANY LOANS TO UNION BOSS, SENATORS' AIDE TESTIFIES"

Seattle Times, March 22, 1957.

p. 1985:

"TEAMSTERS' CASH KEPT GOING TO BECK AFTER HE BECAME UNION PRESIDENT, SAYS PROBER" Seattle Times, March 23, 1957. Wed, Mer. 27, 1957 Brettle Best-Betellennen

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p. 1987:

"BECK TAKES 5TH AMENDMENT
PRESIDENT OF TEAMSTERS 'VERY DEFINITELY'
THINKS RECORDS MIGHT INCRIMINATE HIM"
Seattle Times, March 26, 1957.

p. 1968:

"BECK'S USE OF \$85,000 MAY BE THEFT, SAYS McCLELLAN" Seattle Times, March 27, 1957.

p. 1991:

"BECK GIVES 'BLACK EYE' TO LABOR, SAYS SEN. McNAMARA" Seattle Times, March 27, 1957.

p. 1992:

"BECK HANGED, BURNED IN EFFIGY BEFORE YAKIMA" TEAMSTERS HALL"

Scattle Post-Intelligencer, March 29, 1957.

p. 1993:

"BECK OUSTED BY AFL-CIO; SILENT HERE"
Seattle Post-Intelligencer, March 30, 1957.

p. 1995:

Picture with caption entitled:
"DAVE BECK BURNING IN EFFIGY"

Time Magazine, April 8, 1957.

p. 1997:

"THE BOSTON TERRIER
BOB KENNEDY BARKS—& BITES"

"Closing the first phase of hearings with Dave Beck last week, Kennedy was surprised not at all to see Beck duck behind the Fifth Amendment. From Counsel Kennedy came a typical reaction: "With the records we have, we'll prove what he would have said if he had talked."

. The jurisdictional labor wars of the 1930s were groin-kicking, skullcracking, stink-bombing affairs, and Dave Beck's West Coast goon squad was the toughest of the lot."

Time Magazine, April 8, 1957.

p. 2001:

"HOW DAVE BECK RATES NOW IN HIS HOME TOWN" "Talking to people, big and little, in this city where

Dave Beck rose to power, you get these reactions:

"That Mr. Beck's own standing, both as head of the big Teamsters Union and as a man of influence in his home town, has been badly hurt by the Senate investigation of racketeering and unions."

"Says a Seattle cab driver: 'We feel the same way Teamsters do in Yakima (where a Beck effigy was burned outside the union hall). Perhaps now we'll get some say-so in our own affairs. . . . we have new men who can lead.""

U. S. News & World Report, April 12, 1957.

p. 2004:

BECK'S ARREST DUE TODAY IN U.S. TAX EVASION CASE."

Seattle Post-Intelligencer, May 3, 1957.

p. 2005:

"BECK INDICTED ON TAXES ARREST WARRANT ISSUED"

Seattle Post-Intelligencer, May 3, 1957.

p. 2007:

"SENATE PROBE LIFTS LID ON BECK BEER BUSINESS"

"USE OF UNION MONEY RELATED"

Seattle Post-Intelligencer, May 9, 1957.

p. 2010:

"BECK'S PROFIT FROM TRUST FUND OF WIDOW TOLD"

Seattle Post-Intelligencer, May 11, 1957.

p. 2011:

"SEN. McCLELLAN SAYS: TRUST DEAL MAY CONNECT BECK TO U.S. MAIL FRAUD"

"GREED AND AVARICE' ASSAILED BY PROBER"
"MAIL FRAUD POSSIBLE IN DEAL, SAYS SOLON"

Seattle Post-Intelligencer, May 12, 1957.

p. 2012:

"ON TOY TRUCKS, OTHER MERCHANDISE: \$180,000 PROFIT TO BECK FAMILY, FRIENDS RELATED"

Seattle Post-Intelligencer, May 14, 1957.

p. 2014:

"BECK APPARENTLY STOLE \$300,000 FROM UNION, SAYS PROBE AIDE"

Seattle Post-Intelligencer, May 15, 1957.

p. 2017:

"WITNESS TELLS PROBE: BECK EVEN MADE PROFIT FROM FAILURE"

"REAL ESTATE MANIPULATION DESCRIBED TO COMMITTEE"

Seattle Post-Intelligencer, May 16, 1957.

p. 2020:

"UNION RECORDS NO \$300,000 LOAN TO BECK, SAYS WITNESS"

Seattle Times, May 16, 1957.

p. 2022:

"BECK MISUSED UNION POSITION IN 52 INSTANCES, SAYS PROBER"

Seattle Times, May 16, 1957

p. 2023:

"BECK ACCUSED OF 52 MISUSES OF POSITION"

Story under this headline lists instances of alleged "misappropriation."

Seattle Times, May 16, 1957.

p. 2026:

"HERE ARE WAYS SENATE SAYS BECK ABUSED TRUST"

Seattle Post-Intelligencer, May 17, 1957.

p. 2027:

"SENATE DOCUMENT CHARGES BECK "TOOK" \$300,000"

Seattle Post-Intelligencer, May 17, 1957.

p. 2028:

"McCLELLAN BLASTS BECK FOR 'RASCALITY'"
"5TH INVOKED SIXTY TIMES"

Seattle Post-Intelligencer, May 17, 1957.

p. 2030:

"'BECKADILLOS' BLASTED AS INCREDIBLE
BY BISHOP BAYNE"

"Irresponsible power, 'shocking beyond words' — as revealed in the recent Dave Beck hearings—was assailed last night by the Rt. Rev. Stephen F. Bayne, Jr. bishop of the Episcopal Diocese of Olympia."

Seattle Times, May 18, 1957.

p. 2031:

"BECK ACTIONS HIT BY BISHOP BAYNE"

Seattle Post-Intelligencer, May 18, 1957.

p. 2032:

"INVESTIGATIONS"

"His Majesty the Wheel

"Untangling the knotted skein of corruption that spewed from the power reel of Teamster Boss Dave Reck, the

select Senate committee investigating labor racketeering has turned up some devastating evidence. Even so, many a rank-and-file Teamster could still tell himself that Good Old Dave had the boys' interest at heart, no matter what he did. Last week, as the hearings took on a new reel. Good Old Dave turned out to be Bad Old Dave for even the toughest teamster. Reason: testimony plainly showed that Dave 1) used the Teamsters, whenever it suited his money-hungry whims, as a useful adjunct to Dave Beck's business enterprises, and 2) cheated the widow of an honored union official in his relentless pursuit of a few easy bucks.

"As the week's hearings began, Dave himself sat down in the committee room, rolled out about 30 Fifth Amendment pleas in 32 minutes. But if Dave was not talking, his former business associates were—and what they had to say should have made Dave leap out of his expensive lizardskin shoes."

Time Magazine, May 20, 1957.

р. 2033:

"BECK OUSTED FROM A.F.L.-C.I.O. POSTS TEAMSTER CHIEF FOUND GUILTY OF 'VIOLATING TRUST'"

Seattle Times, May 20, 1957.

р. 2038:

"McCLELLAN LAYS 'MANY CRIMINAL' ACTS
TO BECK"

Seattle Post-Intelligencer, May 21, 1957.

p. 2039:

"THE CASE AGAINST DAVE BECK AS SENATORS SEE IT"

U. S. News & World Report, May 24, 1957.

р. 2040:

"... TEAMSTER FUNDS' USED 'FOR PAYMENT OF BECK'S PERSONAL BILLS'"

U. S. News & World Report, May 24, 1957.

p. 2041:

"...McCLELLAN: 'RASCALITY HAS BEEN GOING ON IN THIS UNION'"

U. S. News & World Report, May 24, 1957.

p. 2043:

"A CITY ASHAMED"

"DAVE BECK IS ON SEATTLE'S CONSCIENCE"

Time Magazine, May 27, 1957.

p. 2045:

"LABOR RACKETS: BECK AND BECK'S 'BOYS'"

Newsweek, May 27, 1957.

p. 2050:

"BECK JR. TAKES 5TH 130 TIMES SR. ARRAIGNED IN TAX CASE"

Seattle Post-Intelligencer, June 5, 1957.

p. 2055:

"THE UNKNOWN SLEUTH WHO TRAPPED DAVE BECK"

The Saturday Evening Post Magazine, July 6, 1957.

p. 2056:

"THE MAN WHO TRAPPED DAVE BECK"

"HOW A MILD-MANNERED EX-G-MAN WITH A FEARSOME REPUTATION AS AN ACCOUNTING WIZARD ENABLED SENATE PROBERS TO EXPOSE THE CHIEF OF ONE OF THE WORLD'S BIGGEST UNIONS."

The Saturday Evening Post Magazine, July 6, 1957.

p. 2060:

"JURY INDICTS BECK AND SON ON GRAND-LARCENY COUNTS"

Seattle Times, July 12, 1957.

p. 2063:

"KENNEDY HAILS JURY FOR INDICIMENT"

Seattle Times, July 12, 1957.

p. 2067:

"THE DIZZY DESCENT OF DAVE BECK"

Article in Look Magazine, August 6, 1957.

p. 2073:

"PROBE TOLD BECK OKd 'PHONY' UNITS"

Seattle Post-Intelligencer, August 20, 1957.

p. 2075:

"CAN LABOR LIVE DOWN DAVE BECK?"

Article in The Saturday Evening Post Magazine,
August 24, 1957.

p. 2085:

"UNION CORRUPTION HIT BY SENATOR"

Seattle Post-Intelligencer, Sept. 22, 1957.

р. 2106:

Picture of Dave Beck and John F. English, secretary-treasurer of Teamsters' Union.

Seattle Times, October 1, 1957.

Under picture, the secretary-treasurer is reported as saying that he had spent the five hardest years of his life during Beck's leadership trying to keep track of union funds.

p. 2111:

"BECK CALLED SYMBOL OF CORRUPTION"

Seattle Times, October 1, 1957.

p. 2293:

"MOVE TO STALL TRIAL OF BECK JR. DENIED"

Seattle Post-Intelligencer, Nov. 13, 1957.

p. 2314:

"WITNESS DENIES 'CONCOCTING STORY'
FOR DEFENSE OF BECK, JR."
"RECEIPTS IN VAULT ARE FROM CARS
—SAYS AIDE"

Seattle Times, Nov. 20, 1957.

p. 2337:

"DAVE BECK, JR., CONVICTED"

Seattle Times, Nov. 24, 1957.

p. 2339:

"DAVE BECK JR. FOUND GUILTY"

Seattle Post-Intelligencer, Nov. 24, 1957.

(Excerpts from testimony of two witnesses before grand jury)

- "Q. He gave you an envelope with Western Conference and Joint Council on it.
 - A. Yes.
 - Q. This is the envelope, isn't it?
 - A. I believe it is.
- Q. These smears that are made on here, they appear they have been made purposely to make it look old, isn't that true? Take a good look at the smears, they go down very definite.
 - A. I wouldn't say so.
- Q. You wouldn't say so. The F.B.I. may have a different version. You understand they can determine that, don't you?
 - A. Yes.
- Q. You know that. Do you want to tell us when he signed this? You still say he signed this in October of '54 when he gave it to you? Do you want to change your testimony or not?
- A. I don't care to change my testimony. He must have signed it.
 - O. We want the truth.
 - A. I am telling you the truth, Mr. Regal.
- Q. All right. Mr. Devin asked you about these envelopes. He told you about the penalty for perjury. You are the person that is on the stand, you are the person under oath down here, do you understand that?
 - A. Yes sir.
- Q. We are concerned with one thing and one thing only, the truth.

A. Yes sir.

(St. 1826-27)"

"Q. That is the one he gave you October '54, isn't that correct?

A. Well, you are confusing me now.

Q. I am not trying to confuse you, sir. I want you to tell the truth.

A. I am telling the truth.

Q. There is no reason for you to go to the penitentiary for somebody else.

A. I am not even thinking about that, sir.

Q. Well, I am thinking about that, sir.

A. I am telling you the truth so far as I know it."

(St. 1828)

"Q. Do you want to hazard an answer? It isn't because you are lying, is it?

A. No sir. I have cashed, many, many checks for Mr.

Beck."

(St. 1845)

"Q. You haven't talked to Mr. Beck, Sr., in the past several days or several weeks?

A. I have talked with him, but not about the money,

no sir.

Q. You didn't talk about these envelopes in the safe?

A. No sir, only that one time.

Q. It dovetails pretty well with his testimony, doesn't it, fortunately?

A. I don't know, sir.

Q. Would you assume that—so long as you are assuming so many things on the witness stand.

A. Sir, I am not assuming anything."

(St. 1847)

"Q. You are going to be here a long time remembering. You are just starting. When I get through with you Mr. Regal is going to take over again. We don't think you are telling the truth so we are going to stay with you for a while. How much did you cash checks for Dave Beck Sr. for?

A. Well, they would be varying amounts.

Q. You said that. Just start varying, guess at anything you want and I will write it down."

(St. 1854)

"Q. Was one \$50 and one \$100?

A. Mr. Carroll-

Q. Mr. Beck is coming down and he is going to tell us and I've got an idea it should coincide closely anyhow."

(St. 1854)

"BY MR. -REGAL:

Q. Mr. Verschueren, when you were gone out to the union hall to get these envelopes and these things we had the record typed of what you testified to before and you came back and we questioned you again. You testified here early this afternoon that you had received two envevelopes from Mr. Beck, one in '54 and one in '55 and then in '56 he gave you some money, or he put some money into one of the envelopes. When you got back this afternoon you changed that and said he put the money in the envelope the second time and the third time he gave you another envelope. Which is accurate, sir. If you know.

A. Well, I may have been confused the last time.

O. Try to get the accurate story then, if you will.

A. I believe it was the first. He put it in the second envelope the third time.

Q. The third time he put it in the second envelope.

A. Yes.

Q. In other words then this afternoon when you got back from the union hall and said definitely that there was one envelope and then he took that one envelope the second time and put money into it and the third time gave you another envelope, that was not accurate. Your first story this afternoon was an accurate story?

A. Sir, to the best of my recollection, yes. That is sometime ago so I definitely don't recall when everything

took place."

(St. 1871-72)

"Q. ... Then you come back from the union hall after we asked you to bring the money down here and concoct this fallacious story about cashing checks. Are you telling the truth now or were you telling the truth when you told Mr. Devin this money was never used for any purpose at any time?

A. Just a moment, Mr. Regal-

Q. I am asking you a question, When were you telling the truth?

A. Re-state those questions.

Q. I told you that you told Mr. Devin today when you testified before, before you were asked to bring this money down here, that you never had used it, never had taken any money out of this (indicating). This (indicating) was untouched and then you testified when you came back with the money, knowing that it can be checked, that you had used it for checks. Your story is very clear. We know exactly what you are trying to do and no person in this room believes you. You understand that, don't you. And you understand you are standing very close to a perjury charge, if not aiding and abetting grand larceny. If you want to go down the drain with the other people that are to be involved in this, you make your choice now. If you want to tell the truth now, you can do so and you will not be charged. Do you understand? That is your opportunity. Do you want to think about it a minute? Do you want to think about it a minute?"

(St. 1875)

"A. That is not the way the testimony reads, Mr. Regal.

Q. That is the way it reads.

A. It is not."

(St. 1876)

"Q. ... Did you do anything with this money. You see that question was asked because I walked over to Mr. Devin, I knew these bills could be checked, and I asked Mr. Devin to check into that. We know that when Mr. Beck carries \$3,000, \$4,000, \$5,000, \$6,000, \$7,000, \$8,000, \$9,000 or \$10,000 in his pocket, we know he carries new bills, he doesn't carry a bunch of dirty money around. He carries new bills, he gave you new bills when he put them in this envelope, if he did, and there are no new bills in here, I wager and I haven't looked at them. When you get your money from the bank to pay your employees you get new money because money only lasts a few days in commerce, and you should know it, or you probably thought

of it on the way out there. When you said you never used this money, were you lying at that time?

A. No sir, I made a mistaken answer.

Q. You made a mistaken-

A. Just a minute-

Q. You've made them all day, haven't you?

A. Never used for any purpose, didn't I say that?

Q. You said you never used it.

A. I don't consider cashing checks using it."

(St. 1877)

"Q. You had occasion to talk to Mr. Beck—or you had an opportunity to, and I will wager that you did—but until he knew what the facts were it was impossible for you to concoct a story, isn't that true?

A. No sir, that is not true."

(St. 1880)

"Q. You can't get a \$500 bill from a teller because they don't keep theme there."

St. 1908)

- "Q. Did you know they don't keep \$500 bills at all behind those windows . . . Did you know that?
 - A. No sir, I did not.

Q. You know it now.

A. No, I don't.

Q. I am telling you now. They don't keep them there. You can't get a \$500 bill without making a request for it...

A. No, I did not know that.

Q. We are going to assume, just for the value of this discussion then, that is correct because I know it to be correct."

(St. 1909-10)

"Q. ... You don't have counsel in here, Mr. Stratton, and just to advise you, there is nothing criminal in your father coming out and looking at the automobile, and there is nothing criminal in your father driving it, but there is something criminal in your refusing or failing to

tell us the truth on anything we ask you here, that is the only thing we are concerned with now. . . . Lying under eath is a very serious offense . . . "

(St. 1745)

Q. . . . I will ask you to reconsider your testimony now. You are under oath. Tell us the transaction as you remember it. If you wish to do that you can or you can take this somewhat-to use the term-ridiculous idea that you remember nothing about it and are completely oblivious to all these things and how they happened. Do you want to tell us now? ... "

(St. 1745-46)

In the trial in "Alice's Adventures in Wonderland" (Chapter XII) there was involved the identification of a letter, The proceedings with the King acting as judge and the Knave of Hearts as defendant were as follows:

"What do you know about this business?" the King said to Alice."

"Nothing," said Alice.

"Nothing whatever?" persisted the King.

"Nothing whatever," replied Alice.

"That's very important," the King said, turning to the jury ...

"There's more evidence to come yet, please your majesty," said the White Rabbit, jumping up in a great hurry: "this paper has just been picked up."

"What's in it?" asked the Queen.

"I haven't opened it yet," said the White Rabbit, "but it seems to be a letter, written by the prisoner to—to some body."

"It must have been that," said the King, "unless it was written to nobody, which isn't usual, you know."

"Who is it directed to?" said one of the jurymen.

"It isn't directed at all," said the White Rabbit: "in fact, there's nothing written on the outside." He unfolded the paper as he spoke, and added, "It isn't a letter after all: it's a set of verses."

"Are they in the prisoner's handwriting?" asked another of the jurymen.

"No, they're not," said the White Rabbit, "and that's the queerest thing about it." (The jury all looked puzzled.)

"He must have imitated somebody else's hand," said the King. (The jury all brightened up again.)

"Please your majesty," said the Knave, "I didn't write it, and they can't prove I did; there's no name signed at the end."

"If you didn't sign it," said the King, "that only makes the matter worse. You must have meant some mischief, or else you'd have signed your name like an honest man."

There was a general clapping of hands at this: it was the first really clever thing the King had said that day.

"That proves his guilt," said the Queen.

"It proves nothing of the sort," said Alice. "Why you don't even know what they're about!"

"Read them," said the King.

(Exhibit read to jury)

"That's the most important piece of evidence we've heard yet," said the King, rubbing his hands; "so now let the jury..."

"If any one of them can explain it," said Alice . . . "I don't believe there's an atom of meaning in it."

The jury wrote down on their slates, "She doesn't believe there's an atom of meaning in it," but none of them attempted to explain the paper.

... "Let the jury consider their verdict," the King said, for about the twentieth time that day.

"No, no!" said the Queen. "Sentence first-verdict afterward."

ES R. BROWNING, Clark

In the Supreme Court of the United States

October Term. 1951

DAVID D. BECK, Petitioner, vs.

STATE OF WASHINGTON, Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR RESPONDENT IN OPPOSITION

CHARLES O. CARROLL
King County Prosecuting Attorney
WILLIAM L. PAUL, Jr.

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Counsel for Respondent.

602 County-City Building, Seattle 4, Washington.

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In the

Supreme Court of the United States

OCTOBER TERM 1960

DAVID D. BECK.

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STATE OF WASHINGTON.

Petitioner,
No. 665
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Washington State Supreme Court is reported at 155 Wash. Dec. 565, 349 P.(2d) 387 (App. p. 1 of petition). The order of the Washington State Supreme Court adhereing to the above opinion is reported at 156 Wash, Dec. 334, 353 P.(2d) 429 (App. p. 64 of petition).

JURISDICTION

Rule 23 (1) (f) of the Revised Rules of the Supreme Court of the United States requires that the petitioner (for certiorari) set out in the statement of the case

"... the way in which they [the federal questions] were passed upon by the court; with such pertinent quotations of specific portions of the record, or summary thereof, with specific references to the places in the record where the matter appears (e.g., ruling on exception, portion of the court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this court jurisdiction to review the judgment on writ of certiorari."

The petitioner in this cause has not, and it is submitted that he cannot, comply with the above quoted provision of the rules of this court. The decision of the state court was based entirely upon the laws of the state of Washington and no Federal question was ruled upon by the state court nor necessary to its decision.

QUESTIONS PRESENTED

Does an affirmance of a criminal conviction by an equally divided state appellate court raise a Federal question under the Fourteenth Amendment to the Federal Constitution?

Does the fact that the Washington State Supreme Court is unable to agree on the meaning of Washington statutes regulating grand jury procedure raise a Federal question under the Fourteenth Amendment to the Federal Constitution?

Does a determination by a state court under state law that neither a continuance nor a change of venue in a particular criminal case is necessary to ensure that the defendant in that case gets a fair trial raise a Federal question under the Fourteenth Amendment to the Federal Constitution?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Article I, Section 25 of the Washington State Constitution provides as follows:

"Offenses heretofore required to be prosecuted by indictment may be prosecuted by information, or by indictment, as shall be prescribed by law."

Article IV, Section 2 of the Washington State Constitution provides as follows:

"The supreme court shall consist of five judges, a majority of whom shall be necessary to form a quorum, and pronounce a decision. The said court shall always be open for the transaction of business except on nonjudicial days. In the determination of causes all decisions of the court shall be given in writing and the grounds of the decision shall be stated. The legislature may increase the number of judges of the supreme court from time to time and may provide for separate departments of said court." (Emphasis supplied)

Section 2.04.070 of the Revised Code of Washington provides as follows:

"The supreme court, from and after February 26, 1909, shall consist of nine judges."

Section 10.28.030 of the Revised Code of Washington provides as follows:

"Challenges to individual grand jurors may be made by such person [in custody or held to answer for an offense] for reason of want of qualification to sit as such juror; and when, in the opinion of the court, a state of mind exists in the juror, such as would render him unable to act impartially and without prejudice."

Section 10.28.130 of the Revised Code of Washington provides as follows:

"If a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he must declare the same to his fellow jurors, who may thereupon investigate the same, if a majority so order."

Section 10.25.070 of the Revised Code of Washington provides as follows:

"The defendant may show to the court, by affidavit, that he believes he cannot receive a fair trial in the county where the action is pending, owing to the prejudice of the judge, or to the excitement or prejudice against the defendant in the county or some part thereof, and may thereupon demand to be tried in another county. The application shall not be granted on the ground of a itement or prejudice other than prejudice of the judge, unless the affidavit of the defendant be supported by other evidence, nor in any case unless the judge is satisfied the ground upon which the application is made does exist."

Section 10.46.080 of the Revised Code of Washington provides as follows:

"A continuance may be granted in any case on the ground of the absence of evidence on the motion of the defendant supported by affidavit showing the materiality of the evidence expected to be obtained, and that due diligence has been used to procure it; and also the name and place of residence of the witness or witnesses; and the substance of the evidence expected to be obtained, and if the prosecuting attorney admit that such evidence would be given, and that it be considered as actually given on the trial or offered and overruled as improper the continuance shall not be granted."

STATEMENT OF THE CASE

Respondent will adopt petitioner's mode of reference to the record explained at page 11 of petition. This case concerns a simple case of grand larceny by embezzlement tried in a state court. Petitioner was indicted for the offense by a grand jury on July 12, 1957 (Tr. 1) in King County, Washington.

Grand juries are quite rare in the state of Washington, most criminal actions being commenced by information filed by the prosecuting attorney. As was pointed out in the state appellate proceedings in this case, "During the forty years preceding the calling of this grand jury, there had been only seven grand jury sessions in King County." State v. Beck, 155 Wash. Dec. 565, footnote on page 615 (App. p. 51 of petition). As a consequence, the decisional law in regard to grand jury procedure is not well settled in the State of Washington.

During the time when the grand jury met, the petitioner was also under investigation by a Congressional committee. These circumstances together with the prominence of the petitioner caused a considerable amount of publicity to attend the above proceedings. In impaneling the grand jury, no affirmative determination was made as to whether the individual jurors were impartial and unbiased, although at least two of the prospective members of the grand jury panel were excused for prejudice. State v. Beck, 155 Wash. Dec. 565, footnote at page 604 (App. p. 50 of petition).

OR.

The subsequent proceedings are well described by excerpts from the publication of the state appellate court in this case:

"The indictment was returned by the grand jury on July 12, 1957. The trial began five months, lacking ten days (December 2, 1957) later. The trial had originally been set for October 28, 1957, but was continued for more than a month on the representation that additional time was necessary for the appellant [petitioner] to prepare his defense." State v. Beck, 155 Wash. Dec. 565, 575 (App. p. 11 of petition).

"The trial itself, divorced from the prominence of the defendant, presents a very simple factual issue.

"The state's evidence showed that the defendant had possession of a 1952 Cadillac automobile, belonging to the Western Conference of Teamsters; that he authorized its sale; that it was sold for nineteen hundred dollars, and the proceeds of the sale were deposited in one of his personal accounts over which he had exclusive control; that the Western Conference of Teamsters never received any part of the nineteen hundred dollars.

"To meet this evidence in support of the charge that he did '... wilfully, unlawfully and feloniously secrete, withhold or appropriate the said \$1,900 to his own use with intent to deprive and defraud the owner thereof; there was testimony that the defendant thought the car was sold while he was out of the city; that when he returned and found that the car had been sold and the purchase price had been deposited in his account, he delivered nineteen hundred dollars to a bookkeeper and

told him to apply it to the account of either the Western Conference of Teamsters or the Joint Council of Teamsters, whichever owned the car. It was patently a defense that could be contrived to meet the exigencies of the case.

"The state's case was clear and unchallenged. The basic issue for the determination of the jury was whether or not it believed the explanation presented by the defense. The verdict of guilty was the jury's answer to that issue." State v. Beck, 155 Wash. Dec. 565 (App. p. 1 of petition).

Petitioner was sentenced and thereafter exhausted his state appellate remedies in the manner provided by law.

On February 3, 1960, the Washington State Supreme Court filed its per curiam opinion which reads as follows:

"PER CURIAM.—One of the judges of this court disqualified himself from participating in the decision of this case. The eight remaining judges, after numerous conferences, are equally divided in their decision for the reasons appearing in the opinions filed.

"There being no majority for affirmance or reversal, the judgment of the trial court stands affirmed.

"It is so ordered."

On rehearing, the Washington State Supreme Court filed an order on June 14, 1960, in which a majority adhered to the per curiam opinion set out above. State v. Beck, 156 Wash. Dec. 334 (App. p. 64 of petition).

As indicated by the per curiam opinion above, the

\$

judges of the Washington State Supreme Court there set out the reasons why they were unable to agree on the merits. Since no more than four judges of the Washington Supreme Court signed any of the opinions giving the reasons why the court could not agree, those reasons are of no significance whatsoever as far as the decisional law of the state of Washington is concerned. Those reasons are significant, however, in that the only point of disagreement indicated therein is as to whether the laws and constitution of the state of Washington require that grand juries be impartial and unbiased. On the questions of continuance and change of venue and affirmance by a divided court there is no disagreement indicated whatsoever.

Petitioner now seeks to make this court a supervisory agency for criminal proceedings in the courts of the state of Washington.

ARGUMENT

The issues sought to be raised in the instant case are entirely within the purview of state law, and no Federal question is presented. It is a well-settled rule that the United States Supreme Court will not review a decision of a state court that is based upon an adequate state ground, even though it also could have been decided on a Federal ground. Williams v. Kaiser, 323 U.S. 471, 65 S.Ct. 363, 89 L.ed. 398 (1944); Dixon v. Duffy, 344 U.S. 143, 73 S.Ct. 193, 97 L.ed 476 (1952); Honeyman v. Hanan, 300 U.S. 14, 57 S.Ct. 350, 81 L.ed. 476 (1936).

In his petition at pages 4 through 7, petitioner has

made certain assertions that the Washington State Supreme Court has decided certain things in regard to the Fourteenth Amendment to the United States Constitution and in regard to grand jury proceedings under Washington state law. The only decision rendered by the Washington State Supreme Court in the instant case is that the conviction of petitioner is affirmed because the court is equally divided on the merits. Certain reasons are set out following that per curiam opinion as to why the Washington court is equally divided. However, as pointed out by petitioner at pages 41 and 42 of petition, under the Washington State Constitution less than five judges in an en banc hearing cannot pronounce a decision. Therefore, since the reasons for the Washington court being equally divided are signed by no more than four judges each, those reasons are not a decision of that court.

Furthermore, the reasons set out for the division of the court do not in any way involve the Fourteenth Amendment to the United States Constitution, nor is the Fourteenth Amendment necessary to the reasons given. Those reasons are concerned solely with state law, as explained below.

Affirmance of a Criminal Conviction by an Equally Divided State Court

There is no Federal Constitutional prohibition against affirmance of a criminal case by an equally divided court. Yancy v. U.S., 362 U.S. 389, 80 S.Ct. 811, 4 L.ed. (2d) 864 (1960); Lott v. Pittman, 243 U.S. 588, 37 S.Ct. 473, 61 L.ed. 915 (1916). It has always been the rule in the state of Washington that the lower court

will be affirmed when the supreme court is equally divided for affirmance or reversal. See Peterson v. City of Tacoma, 139 Wash. 313, 246 Pac. 944 (1926); Statev. Alfred, 145 Wash. 696, 260 Pac. 1073 (1927); Clise v. Carroll, 163 Wash. 704, 300 Pac. 1047 (1931); Edwards v. Carroll, 163 Wash. 704, 300 Pac. 1048 (1931); Bloss v. Equitable Life Assurance Society, 176 Wash. 1, 33 P.(2d) 375 (1934); Peoples Bank and Trust Company v. Romano Engineering Corporation, 188 Wash. 290, 62 P.(2d) 445 (1936); Investment and Securities Company v. The American Bank of Spokane, 196 Wash. 347, 82 P.(2d) 857 (1938); Serra v. The National Bank of Commerce, 27 Wn.(2d) 277, 178 P.(2d) 303 (1947); State ex rel. Taxpayers of Pierce County v. Remann, 29 Wn. (2d) 843, 190 P. (2d) 95 (1948); Croton Chemical Corporation v. Birkenwald, Inc., 49 Wn. (2d) 876, 307 P.(2d) 881 (1957); and Best v. Dakin, 52 Wn.(2d) 517, 326 P.(2d) 1009 (1958).

This rule has always been uniformly applied in Washington and there is no reason under the equal protection clause of the United States Constitution why the rule should be deviated from in this case. The rule is one of universal acceptance. See 5 C.J.S. 252, § 1844, 3 Am. Jur. 671, § 1160, and cases collected therein. A substantially identical situation obtained in State ex rel. Hampton v. McClung, 47 Fla. 224, 37 So. 51 (1904), wherein the court explained the reasons why the rule applies even where there is a Constitutional requirement that a majority of the court is necessary to pronounce a decision.

Petitioner complains that the Washington court did

not give the reasons for its decision as required by Article IV, § 2 of the Washington Constitution. It has never been decided whether that provision of the Washington Constitution is directory or mandatory. Assuming arguendo that it is mandatory, the reason was given by the Washington court—it being that the court was equally divided on the merits.

Petitioner complains that the Washington court is attempting to affirm his conviction without the concurrence of a majority of the court. This is in direct contradiction to the order in the instant case reported at 156 Wash. Dec. 334, 353 P.(2d) 429 (App. p. 64 of petition).

The above rule of affirmance is due process as followed by the United States Supreme Court and has always been equally applied in the state of Washington. Therefore, it presents no Federal question.

Petitioner's Right to an Impartial Grand Jury

There is no Federal Constitutional right to an impartial grand jury. U.S. v. Knowles, 147 F.Supp. 19, 20-21 (1957):

"Challenges for bias, or for any cause other than lack of legal qualifications, are unknown as concerns grand jurors. No provision is made for peremptory challenges of grand jurors and no such challenges are permitted. Likewise no voir dire examination exists in respect to grand jurors. In other words, the status of a member of a grand jury may not be questioned except for lack of legal qualifications."

See, also, Hale v. Henkel, 201 U.S. 43, 26 S.Ct. 370, 50 L.ed. 652 (1906).

In fact, there is no Federal right to a grand jury at all in state proceedings. *Paterno v. Lyons*, 334 U.S. 314, 68 S.Ct. 1044, 92 L.ed. 1409 (1947); *Gaines v. Washington*, 277 U.S. 81, 48 S.Ct. 468, 72 L.ed. 793 (1927).

The only question presented here is whether, under the Constitution and statutes of the state of Washington, grand juries must be impartial and unbiased or, more specifically, whether there must be an affirmative determination as to whether they are impartial and unbiased.

It is nowhere contended that the Constitution of the state of Washington requires that a grand jury be impartial.

The pertinent Washington Constitutional provision in regard to grand juries is as follows: "Offenses here-tofore required to be prosecuted by indictment may be prosecuted by information, or by indictment, as shall be prescribed by law" (emphasis supplied). Art. I, § 25, Washington State Constitution. Hence, grand jury proceedings in Washington are strictly statutory. The statutes governing grand juries in Washington are found in title 10.28 of the Revised Code of Washington Section 10.28.030 of the Revised Code of Washington provides:

"Challenges to individual grand jurors may be made by such person [in custody or held to answer for an offense] for reason of want of qualification to sit as such juror; and when, in the opinion of the court, a state of mind exists in the juror, such as would render him unable to act impartially and without prejudice."

Section 10.28.130 of the Revised Code of Washington provides:

"If a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he must declare the same to his fellow jurors, who may thereupon investigate the same, if a majority so order."

In construing these statutes regulating grand juries, the Washington Supreme Court is equally divided on the question of whether the Washington legislature intends that grand jury members be without prejudice. See: State v. Beck, 155 Wash. Dec. 565, 570, 571, 608, 349 P.(2d) 387 (App. pp. 6-7, 44 of petition).

It is well settled that state court determinations of state law are binding on the United States Supreme Court. Williams v. Kaiser, 323 U.S. 471, 65 S.Ct. 363, 89 L.ed. 398 (1945). The effect of the Washington court decision in the instant case is that the meaning of Washington statutes in regard to grand juries cannot be determined at this point. It would follow that this determination also is binding on the United States Supreme Court.

Since there is neither a Federal nor a Washington state Constitutional right to an impartial grand jury, and the Washington Supreme Court cannot determine what the Washington statutes prescribe in that regard, the Washington legislature and not the United States Supreme Court must answer that question.

The cases relied on by petitioner relate to situations where a member of a minority racial group was indicted by a grand jury from which members of that minority racial group were systematically excluded. Those cases have no application to the instant case. There is no minority racial group involved and no claim of exclusion. On the contrary, petitioner complains because a particular system of exclusion was not employed. As pointed out above, this is strictly a question of interpretation of state law and no Federal question is presented.

Motions for Continuance and Change of Venue

Petitioner complains that the Washington courts violated his rights under the Fourteenth Amendment to the Federal Constitution in ruling on his motions for continuance and for a change of venue. Petitioner does not allege that any of the applicable statutes or decisional law followed by the Washington courts are unconstitutional. Nor does he claim that the state courts failed to follow the applicable statutes. Petitioner does claim that the Washington court failed to follow its rule in State v. Hillman, 42 Wash. 615, 85 Pac. & (1906). In the opinion for affirmance in the instant ease, distinguishing the Hillman case, the court said:

"In the Hillman case we have allegations of fact, which, if not true, could have been contreverted. Here we have only legal conclusions based upon information and belief, not capable of contravention." State v. Beck, 155 Wash. Dec. 565, 578, 349 P.(2d) 387 (1960), (App. p. 14 of petition).

The state requirements for continuance and change of venue are set forth in RCW 10.46.080 and RCW 10.25.070 respectively reproduced at page 4 of this brief. Petitioner completely failed to meet those requirements of the state proceedings. Specifically, petitioner did not present any evidence of prejudice as required by RCW 10.25.070 nor did he show the absence of any evidence expected to be obtained as required by RCW 10.46.080. Even so, the trial was continued for more than a month on the representation that additional time was needed to prepare the defense.

As petitioner recognizes, the purpose of a continuance or a change of venue under the circumstances in the instant case, is to secure to petitioner a fair and impartial jury. This is essentially a factual question under the applicable state laws which question was carefully considered and decided by both the trial and appellate courts of the state. As to the factual question of whether petitioner was tried by a fair and impartial jury in the instant case, in the opinion for affirmance at pp. 576-577 (App. pp. 12-13 of petition) it is said:

"The appellant tries to apply the ex post facto test of the number on the jury panel who admitted prejudice. Appellant fails to make clear that all such prospective jurors were excused, and that thirteen jurors were selected and accepted by both sides within a very reasonable time. All of the fifty-five people who were examined on voir dire as prospective jurors had, of course, heard of the case either through television, radio, or the newspapers, but only nineteen were excused for prejudice."

"The record of the voir dire examination of those called as prospective jurors negates any contention that a continuance was necessary to insure the appellant a fair trial, and justifies the statement of Judge Malcolm Douglas (on November 26, 1957), in denying the motion for a continuance:

"... I am not at all impressed with your contention that Dave Beck, Sr., cannot have a fair trial in this community at this time. I believe arguments such as these do poor credit to the intelligence and fairness of the high-calibered jurors that we have in this community, and I am satisfied from observing the trial of cases for many years here and observing the type and quality of jurors that we have had... that it is possible to find 12 jurors who can give a defendant, including this defendant, just as fair a trial in December as one could be found to give him in May..."

At this point it should be reiterated that there was no indication whatsoever by the Washington State Supreme Court of any disagreement on this point nor on any point except the meaning of Washington statutes in regard to grand juries.

Publicity is the only factual matter petitioner cites in support of his contention that a change of venue or a continuance was necessary to secure for him a fair trial. Petitioner was indicted on July 12, 1957, and his trial began on December 2, 1957. Petitioner cites a great deal of publicity occurring prior to his indictment (App. pp. 96-104 of petition). However, during the one hundred and forty-three days that intervened between the indictment and the trial, petitioner cites

only four instances when he received publicity in Seattle newspapers and four when his son received such publicity (App. pp. 104-105 of petition). This is not such publicity as would make impossible the selection of a fair and impartial jury. Nor is this embezzlement the type of crime that would inflame the community so as to prevent a fair trial. Certainly, what petitioner has alleged here does not even begin to show that the newspaper accounts aroused against him such prejudice in the community as to necessarily prevent a fair trial. See, Stroble v. California, 343 U.S. 181, 72 S.Ct. 599, 96 L.ed. 872 (1951). There is nothing in the petition to show that the factual determination of the state court was anything but correct, and even less to show that there is any Federal question involved. The cases cited by petitioner are for the most part aggravated cases of racial prejudice. There is no such element present here.

Beyond a doubt petitioner is a prominent national figure. Were he to be again tried on similar charges it cannot be doubted that he would receive equal publicity to that which he received during the one hundred and forty-three days preceding the trial in question. Certainly, any person as prominent as petitioner would receive such publicity in similar circumstances. No person should be granted immunity from criminal process by the fact that the various news media consider him newsworthy.

CONCLUSION

Since there is no Federal question involved, it is

respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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Attorneys for Respondent.

No. 663 40

In the Supreme Court of the United States

October Term

1961

DAVID D. BECK,

Petitioner,

VS.

STATE OF WASHINGTON,

Respondent.

REPLY BRIEF OF PETITIONER

ON

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE
OF WASHINGTON

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REASONS FOR GRANTING CERTIORARI

This Court need not consider this case merely for the benefit of Petitioner alone. The case is one which will have significant effect upon criminal procedure in state courts and particularly in the State of Washington.

This is not to deny that petitioner, for his own benefit, desperately requires consideration of his case by a court which will apply fundamental standards of due process and equal protection. The fact that this case is merely a \$1900 larceny case does not diminish its importance to this Court.* Cf. Thompson v. Louisville, 362 U. S. 199. Bad decisions make bad law which stands as precedent to be applied in subsequent cases which may involve more serious offenses, and which may involve defendants whose conviction is not so widely sought as in this case.

This case involves denial of due process and equal protection by methods which have not been specifically considered by this Court and which, we believe require full review and decision for the guidance of other litigants in cases arising in state courts.

Among the questions raised by the procedure in this case, and by Respondent's brief, which require consideration by this Court are the following:

(1) Is the Federal constitutional right to an impartial grand jury (Cassell v. Texas, 339 U. S. 282) limited to minority racial groups? See Resp. Br. 14. If so, was Respondent a person or member of a group entitled to this right? Four judges of the Supreme Court of the State of Washington, despite Cassell and related cases, denied that there was any federal constitutional right to an impartial grand jury. Having taken this position, it was unnecessary for them to determine whether or not petitioner was a person or member of a group entitled to the right recognized in Cassell and similar cases.

At the conclusion of the 34-page opinion of the four judges who favored affirmance, the point was made that petitioner's case was a "nineteen hundred dollar grand-larceny-by-embezzlement case." See Appendix to Petition herein, pp. 34-35. It appears that there is an implication that because of the relatively small sum of money involved, Petitioner was not justified in asserting so many and novel issues.

- (2) Where the Supreme Court of the State of Washington is divided and, accordingly, cannot determine or decide the State of Washington law, must Petitioner be imprisoned while the Legislature of the State of Washington decides what the law is?
- (3) Where the Washington Supreme Court cannot determine what the Washington statutes prescribe, and where a federal constitutional question is involved, is this Court prohibited from determining Petitioner's rights under the federal constitution and under Washington law? See Res. Br. 13.

FEDERAL QUESTIONS ARE INVOLVED

Selection of the Grand Jury and Conduct of Prosecuting Attorneys

This Court has repeatedly "adhered to the view that valid grand jury selection is a constitutionally protected right." Reece v. Georgia, 350 U.S. 87; Cassell v. Texas, 339 U.S. 282; State v. Pierre, 306 U.S. 354. Respondent flatly argues that there is "no Federal Constitutional right to an impartial grand jury" (Res. Br. 11) despite the language of this Court in Cassell v. Texas, 339 U.S. 282-283 which specifically refers to the "federal constitutional right to a fair and impartial Grand Jury." The Respondent and the courts of the State of Washington have ignored these principles throughout this case.

Trial in an Atmosphere of Prejudice and Hostility

This Court has repeatedly held that the Fourteenth Amendment to the United States Constitution requires that state court proceedings be conducted in an atmosphere of fairness and impartiality. Moore v. Dempsey, 261 U. S. 86; Shepherd v. Florida, 341 U. S. 50; Stroble v. California, 343 U. S. 181; and see Marshall v. United States, 360 U. S. 310; Michelson v. United States, 335 U. S. 469; "The Public Trial and Free Fress," 46 A.B.A.J. 840 (August 1960).

Appellate Proceedings in Violtaion of State Constitution and Statutes

This Court has also held that state appellate procedure must be conducted in a manner which does not violate the guarantee of equal protection provided by the Fourteenth Amendment to the United States Constitution, and by a method which is clearly defined. Eskridge v. Washington State Board of Prison Terms and Paroles, 357 U. S. 214; Young v. Ragen, 337 U. S. 235.

DENIAL OF DUE PROCESS AND EQUAL PROTECTION

Petitioner's Right to an Impartial and Unbiased Grand Jury

The following facts are undisputed: At the time of the impanelment of the grand jury, Petitioner was the subject of accusations of crime and misconduct by a Senate Committee. These accusations were widely circulated by all news media. The court which impaneled the grand jury in the Petitioner's case reminded the grand jurors of the "disclosures" made in the Committee proceedings. The accusations made by the Committee were of such common knowledge in the community that the court, before reminding the grand jurors of the "disclosures" of the Committee remarked that it seemed "unnecessary to review the recent testimony before the Sen-

ate Investigating Committee" St. 2175-2176. The court incorrectly advised the grand jury that Petitioner had stated that the funds which he received and for which he was indicted were a loan. The Petitioner was specifically identified, by name and title, as the person under investigation.

The charge to the grand jury was framed in terms which would create prejudice against Petitioner, or increase the prejudice which (unless we ignore realities) already existed toward Petitioner.

The court took no steps whatsoever to determine whether any of the grand jurors were prejudiced against the Petitioner as a result of these hearings or the court's reference thereto, or for any other reason. The grand jury was not even instructed to attempt to act impartially.

Petitioner submits and has consistently contended that in the selection of the grand jury he was entitled to at least some minimum protection against bias and prejudice, particularly in view of the fact that the impanelment took place amidst violent and widespread accusations against Petitioner by persons of high rank and standing. At the very least, the trial court should not have reminded the grand jurors of the extra-judicial accusations which were then currently being circulated. See Petition herein, pp. 28-36.

In the State proceedings, this argument was raised and summarily dismissed by the trial court. The four judges of the Supreme Court upon whose opinion Petitioner is to be imprisoned (although the other four judges disagree) answer Petitioner's argument by stating that there is no longer any

right, federal or state, to an impartial grand jury.* Indeed, these judges assert that the grand jury is no longer intended to be "a shield against the zealous prosecutor, as in times past . . .". Appendix to Petition herein, p. 3. The frightful misconception of the State Supreme Court in this connection is illustrated by a comparison of its views with those of this Court in Hoffman v. United States, 341 U. S. 479. In that case, speaking for the Court, Justice Clark stated that in grand jury proceedings there was (341 U. S. 485):

"... continuing necessity that prosecutors and courts alike be 'alert to repress' any abuses of the investigatory power invoked, bearing in mind that while grand juries 'may proceed, either upon their own knowledge or upon the examination of witnesses, to inquire ... whether a crime cognizable by the court has been committed,' *Hale v. Henkel*, 201 U. S. 43, 65, 50 L.ed 652, 661, 26 S.Ct. 370 (1906), yet 'the most valuable function of the grand jury [has been] not only to examine into the commission of crimes, but to stand between the prosecutor and the accused.' Id. 201 U. S. at 59."

Respondent apparently contends that the federal right to an impartial grand jury is limited to members of a minority racial group. Res. Br. p. 14. But in *Hernandez v. Texas*, 347 U. S. 475, 477, this Court pointed out that the doctrine of equal protection extends beyond the bounds of race or color. The question now is: Does a group composed of officials of a labor union who are under intensive public

[•] The assertion that the rule relating to selection of grand jurors is different because in the State of Washington accusation may also be made by Information is discussed in the section of this brief relating to the adequacy of the State grounds for affirmance of the conviction.

scrittiny and criticism by a Senate Committee* have an equal right to an impartial grand jury? Whether Petitioner was a member of a group entitled to the guarantee of equal protection was a question of fact. Hernandez v. Texas, 347 U.S. 475, 478. The courts of Washington did not consider or decide this question. Having postulated that Petitioner in no event had a right to an impartial grand jury there was no need to do so.

Respondent also urges, apparently, that the impanelment of the grand jury in this case was valid because members of a minority racial group were not "systematically excluded." Resp. Br. 14. But, as demonstrated in *Hernandez*, systematic exclusion is simply a method (but not the only method, see *Cassell v. Texas*, 339 U. S. 282, at 290) of proving discrimination; and discrimination, as shown in *Cassell*, violates the "federal constitutional right to a fair and impartial Grand Jury."

In Petitioner's case proof of discrimination or proof of prejudice were not issues because the State of Washington, from the beginning of the case, denied Petitioner's right to protection against prejudice in the grand jury. Indeed, the State, by action of both the trial court and the prosecutors, helped to create prejudice.

If the State had recognized Petitioner's right to an impartial grand jury, the State courts would not have required that the discrimination, or prejudice, be established by a process of systematic exclusion

The trial court referred to Petitioner specifically by name and as "president of the Teamsters Union" and also included Petitioner in the group described by the Court as "officers of the Teamsters Union" (St. 2175-2176).

or by any specific method. Before Beck, the rule in Washington was that grand jurors must be impartial and unbiased, and it was the duty of the trial court to select or exclude jurors on an individual basis, for the purpose of "insuring that qualified and impartial grand jurors are secured." State v. Guthrie, 185 Wash. 464, 56 P. 2d 160; State ex rel-Murphy v. Superior Court, 82 Wash. 284, 144 Pac. 32. But with Beck, protection against prejudice was withdrawn, and perforce methods of proving prejudice became irrelevant.

Misconduct of Prosecuting Attorneys in Grand Jury Proceedings

The conduct of the prosecuting attorneys in the Grand Jury room is in part set forth in Appendix A to the opinion of the four judges of the Supreme Court of Washington who were in favor of reversal of Petitioner's conviction. See Appendix to Petition herein, pp. 52-62. The conduct was grossly improper under any standard of conduct.

Measured by the conduct which this Court condemned in Berger v. United States, 295 U. S. 78, the conduct of the prosecutors constituted gross and prejudicial misconduct; and in this case the misconduct was particularly prejudicial because, having been committed in secret, it was not subject to corrective instruction by any court.

A prosecuting attorney is a state officer, and misconduct on the part of a prosecuting attorney constitutes a violation of the Fourteenth Amendment. See *Mooney v. Holohan*, 294 U. S. 103. Moreover, the conduct clearly violated Petitioner's right to impartial consideration of his case by the grand jury.

Denial of Motions for Continuance and Change of Venue

It is undisputed that under the federal Constitution, Petitioner should not have been compelled to submit to trial in an atmosphere of prejudice and hostility. See Petition herein, p. 36-41. In its brief, Respondent inaccurately summarizes the record and disregards the elements of a fair trial. Thus:

- (1) Respondent asserts that "Petitioner cites" only four instances of publicity in Seattle which occurred between the indictment and the trial. Res. Br. 16-17. Respondent should have advised the Court that the instances cited by Petitioner were only illustrative. The record contains countless additional examples of newspaper publicity extremely hostile to Petitioner, as well as sworn testimony relating to adverse and intensive television and radio publicity, much of which occurred after the indictment and prior to the trial. St. 2250-2340.
- Court considered the fact (now uniformly recognised) that prejudice is frequently subconscious. No consideration whatsoever was given to the fact that a fact finder is often unable to determine whether or not he has become prejudiced by what he has seen and heard. And no consideration was given to the fact that in this case the constant accusations against the Petitioner to which the community was exposed were made by persons of high rank and standing in the United States. See Pennekamp v. Florida, 328 U. S. 331, 357; See also 63 Harvard Law Review 846; 34 New York University Law Review, 1278; Marshall v. United States, 360 U. S. 310.

- (3) Respondent asserts that the crime involved was not the type which would inflame the community so as to prevent a fair trial. Here, however, the prejudice toward Petitioner was not created by the nature of the offense, but by proceedings of a United States Senate Committee which the state courts disregarded completely in ruling upon Petitioner's motions for continuance and change of venue.
- (4) The only finding of fact made by the trial court was that Petitioner could obtain as fair a trial in December 1957 as he could in May 1958, the date to which a continuance was requested. See Res. Br. 16. We submit that Petitioner was entitled to the chance that the hostility against him would subside by May 1958.
- (5) Respondent argues that no person "should be granted immunity from criminal process by the fact that the various news media consider him newsworthy." Res. Br. 17. Petitioner did not seek immunity. He merely sought a reasonable continuance or change of venue in order to avoid the effect of bitterly hostile accusations which were circulated throughout the community with a degree of intensity and repetition which is surely unparalleled and which rarely, if ever, has been presented to this Court or any court. Here the extra-legal accusations were not isolated instances which merely by chance came to the attention of some members of the community. They were repeated and continuous, and resulted from an intended and designed program to bring Petitioner's alleged wrongdoings to the attention of the entire community.

Discrimination Against Petitioner in Appellate Proceedings

Under the Constitution of the State of Washington petitioner was entitled to the right of appeal (Article I, § 22, Amendment 10, Washington State Constitution). Under the Fourteenth Amendment to the United States Constitution he was entitled to a "clearly defined method" of raising his claim of denial of federal rights. Young v. Ragen, 337 U.S. 235, 239; Carter v. Illinois, 329 U.S. 173. In connection with submission of his appeal, he was also entitled, under the Fourteenth Amendment, to due process and equal protection of law. Eskridge v. Washington State Board of Prison Terms and Paroles, 357 U.S. 214.

The Constitution of the State of Washington, as well as the statutes relating to appeal and the Rules of the Supreme Court of the State of Washington, require that all cases on appeal shall be decided by a majority of the judges to whom the case is submitted. See Petition herein, pp. 9-11. The right to a decision by the majority of the judges, as provided therein, was denied to Petitioner. Only four of the eight judges who heard the case favored affirmance of the conviction. Unless this Court acts, Petitioner will be imprisoned by the State of Washington upon the opinion of four judges whose acts are not authorized by any constitutional or statutory provision and which were in fact directly contrary to the applicable constitutional and statutory provisions.

It is conceded by Respondent that a divided opinion by the State Supreme Court does not change or even determine the law in the State of Washington. Res. Br. 13. Accordingly, defendants in other

future criminal cases, as they have in the past, may continue to rely upon the constitutional and statutory provisions which require the right of majority decisions. Petitioner was not accorded that right.

PURPORTED ADEQUACY OF STATE GROUNDS

In Wolfe v. North Carolina, 364 U.S. 177, this Court stated (p. 185):

"It is settled that a state court may not avoid deciding federal questions and thus defeat the jurisdiction of this Court by putting forward non-federal grounds of decision which are without any fair or substantial support."

This Court, and not the courts of the State of Washington, is vested with the right and duty to determine whether rights guaranteed by the United States Constitution have been violated. Dixon v. Duffy, 344 U.S. 143. This rule is applied even when determination of the question involves issues of fact. Cassell v. Texas, 339 U.S. 282; Hernandez v. Texas, 347 U.S. 475.

Selection of the Grand Jury

The four judges of the State Supreme Court who favored affirmance of Petitioner's conviction argued that there was no right under state law to an impartial grand jury because accusation in the State of Washington may be by Information as well as by Indictment. Appendix to Petition herein, p. 2. But there was no dispute of the fact that in this case the accusation was by Indictment, and it is not suggested that if the grand jury had not indicted, the prosecuting attorney would have accused Petitioner by Information. Neither is it suggested that the prosecuting attorney would have had any right

to act in a venal manner or to accuse Petitioner by Information except in his capacity as a quasi-judicial officer which, presumably, means that the prosecuting attorney would have acted fairly and in accordance with fundamental standards of justice.

Respondent in its brief does not adopt the argument of these judges. No doubt Respondent recognizes that accusation by a biased institution cannot be defended by the suggestion that some other agency or institution might have initiated the accusation. Nothing in the law of Washington would permit this.

The judges in favor of affirmance also seem to say that an invalid grand jury can be cured by a fair trial. Appendix to Petition, p. 4. No law of the State of Washington permits this assumption, and this reasoning has never been applied by this Court in cases involving the validity of grand juries. In Petitioner's case, the proceedings of the invalid grand jury were in fact used at the trial. Thus, the trial itself was infected by the proceedings of the invalid institution which accused Petitioner.

In the Petition herein reference was made to Sec. 10.28.030 of the Revised Code of Washington which expressly contemplates that grand Jurors shall act impartially and without prejudice. Respondent, in an attempt to meet this problem, refers to Sec. 10.28.130 of the Revised Code of Washington which permits a grand juror to report the knowledge of a crime to his fellow jurors. Apparently Respondent is urging that because a grand juror has knowledge of a crime and reports it to his fellow jurors, the grand jury can thereupon act as

a biased and prejudiced institution. Naturally this conclusion does not follow; but any doubt about it is resolved by the very next section of the Revised Code of Washington (Sec. 10.28.140) which provides that a complainant who institutes a prosecution may not be present at the deliberations of a grand jury and may not vote for the finding of an Indictment.

Until Petitioner's case there could have been no doubt that the law in the State of Washington required that the grand jury be a fair and impartial body. See Petition herein, pp. 31-32. Now, because of the divided court in Petitioner's case, Respondent states that the law in the State of Washington on this point cannot be determined, and Respondent even asserts that the fact that the law cannot be determined is binding on this Court. Respondent says that the Legislature of the State of Washington, and not this Court, must answer the question.

We submit that this Court should not accede to the notion suggested that it refuse to act while Petitioner goes to prison and the State of Washington decides its law. This is a question of federal due process, and if the State of Washington cannot decide what its law is, then this Court may certainly do so. Surely four judges of the State Supreme Court, whose opinion admittedly does not determine Washington law, cannot be permitted to imprison Petitioner while the State of Washington settles the law. The fact is that the law in the State of Washington is clear. By statute and decision Washington has declared that the grand jury is an impartial body, and Respondent concedes that the opinion of four judges cannot change this law. Indeed, Section 4.04.010 of the Revised Code of Washington

provides that the common law, where not inconsistent with the constitution and the laws of the United States or the State of Washington, shall be the rule of decision in all courts of the State. Under the common law a prospective defendant was entitled to a fair and impartial grand jury. (See Petition herein, p. 30).

Denial of Motions for Continuance and Change of Venue

Nothing in the law of the State of Washington permits trial in an atmosphere of prejudice and hostility. The record in the case overwhelmingly demonstrates the existence of a continued and intensive program to inform the community of the "crimes" of Petitioner. To say that this program did not affect the attitude of the entire community toward Petitioner would be pure nonsense. By affidavit of fact and opinion Petitioner demonstrated that it would be impossible for him to obtain a fair trial. The record overwhelmingly supports the facts and opinions stated in the affidavits, and the affidavits were uncontroverted. Prior to Petitioner's case the law in Washington was that a defendant was entitled as a matter of right to a change of venue upon an uncontroverted affidavit stating that a fair trial was impossible. State v. Hillman, 42 Wash. 615, 85 Pac. 63. This rule was not applied in Petitioner's case.

In any event, upon the contention that Washington has violated the due process clause of the Fourteenth Amendment, this Court must make an independent determination of the undisputed facts. See Stroble v. California, 343 U.S. 181, 190; Dixon v. Duffy, 344 U.S. 143. This should be particularly true where, as here, the circulation of hostile pub-

licity was so continuous and intensive as to create a strong presumption of prejudice.

Appellate Procedure

No statute, decision or theory of law in the State of Washington permits affirmance of a conviction in a criminal case by a divided court. The Constitution of the State provides for the right of appeal in criminal cases, but not in civil cases. Article I, § 22 (Amendment 10).

Respondent cites a number of decision of the Supreme Court of the State of Washington which affirm, by equal division, the decisions of trial courts in civil cases. Res. Br. 10. These cases specifically declare, however, that the practice of affirmance by a divided court is not inflexible and that affirmance in such cases is warranted only by the exercise of discretionary measures; and the practice of affirming civil cases by a divided court is a rule of expediency. See Serra v. National Bank of Commerce, 27 Wn. 2d 277, 178 P2d 303.*

In criminal cases, where there is a constitutional right of appeal, the Washington Supreme Court

In several states affirmance of conviction by a divided court is permitted, on varying theories. In some cases it is permitted by statute. See Lott v. Pittman, 243 U. S. 588. In some cases the affirmance is based upon common law, although even in such cases the practice is modified or limited. Thus, in New Hampshire the practice is limited to civil cases and misdemeanors. See State v. Perkins (1873) 53 N. H. 435. In Washington the common law rule does not apply in criminal cases because in Washington there is a constitutional right of appeal. There was no such right in common law. See McKane v. Durston, 153 U. S. 684. Moreover, in Washington the rules of common law apply only when they do not contravene the Constitution and laws of the State of Washington. See § 4.04.010, Revised

has no authority or jurisdiction to adopt discretionary methods or rules of expediency, or common law principles, in arriving at its decisions. Civil cases provide no authority for such practice because in Washington there is no constitutional right of appeal in civil cases; and rules of discretion and expediency do not provide the standards of equal protection and definitive methods of appeal to which a defendant in a criminal case is entitled. When will the court exercise its discretion in favor of affirmance and when will it not do so? Why, in certain instances, should the court not exercise its discretion in favor of reversal? In short, when will the right of appeal be granted and when will it not be granted? In the Serra case, supra, the court affirmed a decision in a civil case because it was "expedient" to do so in the interest of the parties. We submit that in a criminal case affirmance of conviction should not be based upon expediency. If expediency is the test, as good an argument can be made for reversal. The interest of the public will in no way be furthered by a decision which, for want of something better, decides no principle of law and creates no precedent and accomplishes nothing more than to imprison a defendant with-

Code of Washington. In some states affirmance by a divided court is based upon a presumption that the rulings of the trial court were correct. This presumption, however, is a presumption of fact not of law. See Ellerbeck v. Haws, (Utah 1958) 265 P.2d 404. In Washington, application of this presumption would deny the right of appeal because it would merely constitute an adoption of the rulings of the trial court, or in effect make the trial court the deciding judge. In some states, it is held that the judges in favor of reversal have a duty to join with those in favor of affirmance. See State ex. rel Hampton v. McClung (1904), 47 Fla. 224, 37 So. 51. This theory has never been applied in Washington, even in civil cases.

out an appeal in the manner provided by the Washington constitution and statutes.

The fundamental violation of due process and equal protection which is involved in appellate procedure of this nature is demonstrated by Respondent's concession that the effect of the Supreme Court opinions in this case is to leave undecided the law of the State of Washington concerning the right of a defendant to an impartial grand jury. Respondent is compelled to urge that because Washington cannot determine its law, Petitioner must be imprisoned until the Legislature determines the law. This Court, says Respondent, has no right to determine the question. Res. Br. 13. Thus, four judges of the State Supreme Court, acting contrary to the Constitution and laws of the State. are being permitted to imprison Petitioner even though it is conceded that these four judges have not determined the Washington law on a critical issue in the case. This itself, we submit, would violate Petitioner's right to due process and equal protection under the Fourteenth Amendment.

The Legislature of the State of Washington has in fact acted since Petitioner's case. House Joint Resolution 6, enacted on March 9, 1961, provides for the appointment of temporary judges to the State Supreme Court when necessary to the orderly administration of justice. A constitutional amendment will be necessary to effectuate this proposal. This resolution was enacted to insure compliance with the existing provisions of the Constitution and laws which require that decisions of the Supreme Court shall be by majority of the judges. See Appendix hereto, pp. 9a and 10 a.

CONCLUSION

We submit that this case involves questions which urgently require review by this Court.

Respectfully submitted,

CHARLES S. BURDELL 929 Logan Building Seattle 1, Washington

JOHN J. KEOUGH
Central Building
Seattle 4, Washington

Counsel for Petitioner

BE IT RESOLVED, BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF WASHINGTON IN LEGISLATIVE SESSION ASSEMBLED:

THAT, At the general election to be held in this state on Tuesday next succeeding the first Monday in November, 1962, there shall be submitted to the qualified voters of this state, for their approval and ratification, or rejection, an amendment to Article IV of the Constitution of the State of Washington, by adding thereto a new section to be numbered section 2(a) of Article IV, which shall read as follows:

Section 2(a). When necessary for the prompt and orderly administration of justice a majority of the Supreme Court is empowered to authorize judges or retired judges of courts of record of this state, to perform, temporarily, judicial duties in the Supreme Court, and to authorize any superior court judge to perform judicial duties in any superior court of this state.

BE IT FURTHER RESOLVED, That the Secretary of State shall cause the foregoing constitutional amendment to be published for at least three months next preceding the election, in some weekly newspaper, in every county where a newspaper is published throughout the state.

Passed the House March 9, 1961. s/John L. O'Brien Speaker of the House.

Passed the Senate March 9, 1961.

s/John A. Cherberg

President of the Senate.

AFFIDAVIT

STATE OF WASHINGTON SS.

JOHN A. PETRICH being first duly sworn deposes and says that:

I am a duly elected member of the Senate of the Legislature of the State of Washington, and am Chairman of the Committee on Judiciary of that body.

The said Senate Committee was vested the primary responsibility for Committee consideration of H. J. R. No. 6. After consideration of this Resolution, the Committee recommended its passage by the Senate with certain amendments thereto, and it was so passed. H. J. R. No. 6 as so amended made the Resolution applicable to the Supreme Court only. Thereafter, the House of Representatives refused to accept the Senate amendments and a conference committee was appointed consisting of Senators John A. Petrich, Joe Chytil, and William A. Gissberg and Representatives Shirley R. Marsh, Slade Gorton, and J. Bruce Burns. This committee was given the power of free conference, and the Resolution was rewritten as appears by exhibit "A" hereof, and was passed by the legislature, and now requires approval by the electorate of the State of Washington at the next general election.

The principal purposes of this Resolution was:

(1) To provide a method for relieving the burden of work of the Supreme Court, by adding temporary members from time to time.

- (2) To provide a full Court of nine members for en banc hearings wherein any member or members are unable or are otherwise disqualified to sit on a particular case.
- (3) To eliminate any doubt as to the constitutionality of the Court Administrator Act, which permits the transfer of Superior Court judges within the State.

There are no written minutes of hearings or deliberations of the aforesaid Committee and no written Committee report, although there are entries of the Senate Journal when the resolution was before the body.

There is attached hereto a full, true and correct copy of H. J. R. No. 6 as the same was passed by the legislature March 9, 1961.

Dated this 24th day of March, 1961.

s/John A. Petrich

Subscribed and sworn to before me this 24th day of March, 1961.

s/Kenneth N. Gilbert

Notary Public in and for the State of Washington, residing at Olympia.

EXHIBIT "A"

HOUSE OF REPRESENTATIVES

State of Washington Office of the Chief Clerk Olympia

HOUSE JOINT RESOLUTION NO. 6

As Amended by the Free Conference Committee and Passed by the Legislature March 9, 1961
BE IT RESOLVED, BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF WASHINGTON IN LEGISLATIVE SESSION ASSEMBLED:

THAT, At the general election to be held in this state on the Tuesday next succeeding the first Monday in November, 1962, there shall be submitted to the qualified voters of this state, for their approval and ratification, or rejection, an amendment to Article IV of the Constitution of the State of Washington, by adding thereto a new section to be numbered section 2(a) of Article IV, which shall read as follows:

Section 2(a). When necessary for the prompt and orderly administration of justice a majority of the Supreme Court is empowered to authorize judges or retired judges of courts of record of this state, to perform, temporarily, judicial duties in the Supreme Court, and to authorize any superior court judge to perform judicial duties in any superior court of this state.

BE IT FURTHER RESOLVED, That the Secretary of State shall cause the foregoing constitutional amendment to be published for at least three months next preceding the election, in some weekly nwspaper, in every county where a newspaper is published throughout the state.

AFFIDAVIT

STATE OF WASHINGTON SS.

SHIRLEY R. MARSH being first duly sworn deposes and says that:

I am a duly elected member of the House of Representatives of the legislature of the State of Washington, and am chairman of the Committee on Judiciary-Civil of that body.

The said House Judiciary-Civil Committee was vested with primary responsibility for committee consideration of H. J. R. No. 6. After consideration of this Resolution, the Committee recommended its passage by the House of Representatives, and it was so passed; said H. J. R. No. 6 was amended in the Senate to, in essence, make the Resolution applicable to the Supreme Court only. The House of Representatives refused to accept the Senate amendments and a conference committee was appointed consisting of Senators John A. Petrich, Joe Chytil, and William A. Gissberg, and Representatives Shirley R. Marsh, Slade Gorton, and J. Bruce Burns. This committee was given the power of free conference and the Resolution was rewritten as appears by exhibit "A" and was passed by the legislature.

The principal purposes of this Resolution, as declared by members of the Judiciary Committee, was:

- To provide a method for relieving the burden of work of the Supreme Court;
- (2) To insure compliance with the provisions

of the Washington statute which provides that decisions in cases submitted to the Supreme Court shall be by concurrence of a majority of the judges hearing the case.

There are no written minutes of hearing or deliberations of the aforesaid Committee and no written Committee report.

There is attached hereto a full, true and correct copy of H. J. R. No. 6 as the same was passed by the legislature March 9, 1961.

Dated this 24th day of March, 1961.

s/Shirley R. Marsh

Subscribed and sworn to before me this 24th day of March, 1961.

s/Kenneth N. Gilbert

Notary Public in and for the State of Washington, residing at Olympia. No. 40

JAMES R. BROWNING, Clork

In the Supreme Court of the United States

October Term, 1961

DAVID D. BECK,

Petitioner,

V8.

STATE OF WASHINGTON,

Respondent.

PETITIONER'S BRIEF

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

CHARLES S. BURDELL
929 Logan Building
Seattle 1, Washington

JOHN J. KEOUGH 1804 Washington Bldg. Seattle 4, Washington Counsel for Petitioner

In the Supreme Court of the United States

October Term, 1961

DAVID D. BECK,

25

Petitioner,

VB.

STATE OF WASHINGTON,

Respondent.

PETITIONER'S BRIEF

ON WRIT OF CERTIFICARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

> CHARLES S. BURDELL 929 Logan Building Seattle 1, Washington

> JOHN J. KNOUGH
> 1804 Washington Bldg.
> Seattle 4, Washington
> Counsel for Petitioner

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ERRATA

Important!

Please Refer to Table of Cases
For Corrected Citations

Some of the citations of authorities appearing in the body of this brief were discovered to be inaccurate during printing. While time would not permit a reprinting of each page wherein such errors occur, the citations as they appear in the Table of Cases have been corrected and are accurate.

In the Supreme Court of the United States

October Term, 1961

DAVID D. BECK,

Petitioner,

VS.

STATE OF WASHINGTON,

Respondent.

PETITIONER'S BRIEF

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

٥I

OPINIONS BELOW

The opinion of the Supreme Court of the State of Washington (en banc) was filed on February 3, 1960, and is reported at 56 Wn. 2d 474, 349 P. 2d 387. The opinion is included in the record at pp. 828-896. The Supreme Court of the State of Washington thereafter granted a petition for rehearing (R. 902), upon rehearing remained "equally divided on the merits", and denied the petition 56 Wn. 2nd 537 (R. 904) and thereafter denied a second petition for rehearing (R. 907).

^{1.} This opinion is a statement of four judges of reasons for affirming the judgment and sentence of the trial court (R.27) and of four judges in favor of remanding the appeal with directions to dismiss the indictment.

JURISDICTION

The final judgment of the Supreme Court of the State of Washington was entered on August 22, 1960 (R. 907). In accordance with Rule 23, an order was entered here extending the time for filing the Petition for Writ of Certiorari to and including January 19, 1961 (R. 911). Following the filing of the petition within the time limited by the order, the petition was granted by order of April 3, 1961, limited to certain questions raised by the petition (R. 911).

Jurisdiction of this Court is invoked upon the timely filing of and order granting the Petition for Writ of Certiorari, 62 Stat. 929, 28 U.S.C. 1257 (3), and the due process and equal protection of the law clauses of the Fourteenth Amendment to the Con-

stitution of the United States.

Ш

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Amendment XIV, §1, of the Constitution of the United States provides in part as follows:

"... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Section 10.28.030 of the Revised Code of Washington provides that a grand juror may be challenged:

"... when, in the opinion of the court, a state

This order denied a petition for rehearing. Under local rules filing of a petition for rehearing stays any prior decisions.

of mind exists in the juror, such as would render him unable to act impartially and without prejudice."

Article IV, §16 of the Washington State Consti-

tution provides:

"Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law."

Section 10.28.070 of the Revised Code of Wash-

ington provides:

"The prosecuting attorney shall attend on the grand jury for the purpose of examining witnesses and giving them such advice as they may ask."

Section 10.40.070 of the Revised Code of Wash-

ington provides:

"The motion to set aside the indictment can be made by the defendant on one or more of the following grounds, and must be sustained.... (4) that the grand jury were not selected, drawn, summoned, impanelled, or sworn as prescribed by law..."

Article I §22 (Amendment 10) of the Washington State Constitution provides:

"In criminal prosecutions the accused shall have . . . the right to appeal all cases;"

Article IV, §2 of the Washington State Constitu-

tion provides:

"The Supreme Court shall consist of five judges, a majority of whom shall be necessary to form a quorum and pronounce a decision... In the determination of causes all decisions of the court shall be given in writing and the grounds of the decision shall be stated. The legislature may increase the number of judges of the Supreme Court from time to time and may provide for separate departments of said court."

R.C.W. 2.04.070 provides:

"The Supreme Court, from and after February 26, 1909, shall consist of nine judges."

Rule 6 of Rules Peculiar to the Business of the

Supreme Court provides:

"The court is divided into two departments, denominated respectively, Department One and Department Two...

"The presence of four judges shall be necessary to transact any business in either of the departments, except such as may be done at chambers, but one or more of the judges may from time to time adjourn to the same effect as if all were present, and a concurrence of four judges shall be necessary to pronounce a decision in each department."

R.C.W. 2.04.170 provides as follows:

"The Chief Justice, or any four judges, may convene the court en banc at any time, and the Chief Justice shall be the presiding judge of the court when so convened. The presence of five judges shall be necessary to transact any business, and a concurrence of five judges present at the argument shall be necessary to pronounce a decision in the court en banc: Provided that if five of the judges so present do not concur in a devision, then reargument shall be ordered and all judges qualified to sit in the cause shall hear the argument, but to render a decision a concurrence of five judges shall be necessary; and every decision of the court en banc shall be final except in cases in which no previous decision has been rendered in one of the departments, and in such cases the decision of the court on banc shall become final thirty days after its filing, unless during such period a petition for rehearing be filed. The filing of such petition within such a period shall have the effect of suspending the decision until disposed of by the concurrence of five judges; ..."

Rule 15 of the Rules Peculiar to the Business of the Supreme Court provides:

"The Chief Justice, or any four judges, may convene court en banc at any time, and the Chief Justice shall be the presiding judge of the court when so convened. The presence of five judges shall be necessary to transact any business, and a concurrence of five judges present at the argument shall be necessary to pronounce a decision of the court en banc: Provided, that if five of the judges so present do not concur in a decision, then reargument shall be ordered and all the judges qualified to sit in the cause shall hear the argument, but to render a decision a concurrence of five judges shall be necessary; and every decision of the court whether rendered en banc or by a department shall be final thirty days after its filing, unless during such period a petition for rehearing be filed. The filing of such petition within such period shall have the effect of suspending the decision until disposed of by the concurrence of five judges:"

Section 10.25.070 of the Revised Code of Washington provides as follows:

"The defendant may show to the court, by affidavit, that he believes he cannot receive a fair trial in the county where the action is pending, owing to the prejudice of the judge, or to the excitement or prejudice against the defendant in the county or some part thereof, and may thereupon demand to be tried in another county. The application shall not be granted on the ground of excitement or prejudice other than prejudice of the judge, unless the affidavit of the defendant be supported by other evidence, nor in any case unless the judge is satisfied

the ground upon which the application is made

Section 4.04.010 of the Revised Code of Washing-

tion provides:

"Estent to which common law prevails. The common law, so far as it is not inconsistent with the Constitution and laws of the United States, or of the State of Washington nor incompatible with the institutions and conditions of society of this state, shall be the rule of decision in all the courts of this state." [1891 C17 §1; Code 1881 §1; 1887 p. 3 §1; 1862 p. 83 §1; RRS §143]

IV

QUESTIONS PRESENTED

(1) Where petitioner individually and the labor union, of which he was president, were subjected to continuous, extensive and adverse publicity in all media of communication throughout the city and judicial district prior to calling of a grand jury to investigate charges made in such publicity, did petitioner have a right under the Fourteenth Amendment:

a. to have the grand jurors selected and impanelled in a manner which would prevent or minimize selection of biased and prejudiced

grand jurors;

b. to have such grand jury charged and instructed to act fairly and impartially and only

upon the evidence presented to it.

(2) Where petitioner and the union of which he was president were subjected to continuous and inflammatory public charges in all news media of the community in which he lived prior to and throughout the deliberations of a grand jury called

in that community, was it a denial of petitioner's rights under the Fourteenth Amendment:

- a. For the Court having charge of the grand jury (1) to mention petitioner by name and in his capacity as president of the union to the grand jurors, (2) to refer to "recent testimony before a Senate Investigating Committee" disclosing that officers of the Union "had, through trick and device, embezzled or stolen hundreds of thousands of dollars of the funds of that union-money which had come to the union from the dues of its members", (3) to advise the grand jury that petitioner claimed money he had received was a loan but this was a question of fact for the jury, (4) and to inform the grand jury that "The necessary criminal charges can only be brought in this county":
- b. For the state's prosecutors in the secrecy of the grand jury room (1) to threaten witnesses testifying contrary to the beliefs of the prosecutor with prosecution for perjury, (2) to state personal disbelief in such testimony, and (3) to present as "facts" to the grand jurors personal belief of the prosecutors.

(3) Was petitioner deprived of his rights under the Fourteenth Amendment to accusation by a fair and impartial grand jury by the facts and circumstances prior to and at the impanellment of the grand jury and throughout its deliberations.

(4) Where petitioner and the union of which he was president were subjected to particularly intensive and hostile public comment in newspapers, magazines, radio, television and all other forms of communication at the place of trial for nine months

immediately preceding the date of his trial, was petitioner's right to a fair trial under the Fourteenth Amendment denied:

a. Where timely motions for continuance were denied; and

b. Where timely application for a change of venue was denied.

V STATEMENT OF THE CASE

A. Pre-Grand Jury

On February 26, 1957, The Select Committee on Improper Activities in the Labor or Management Field (commonly known as the "McClellan Committee", or the "Senate Rackets Investigating Committee") commenced an investigation of certain labor unions and their officials.

By March 3, 1957, newspapers reported the Committee Chairman's comments that the Committee had "produced 'rather conclusive' evidence of a tie-up between West Coast Teamsters and underworld bosses to monopolize vice." The same report said that "Teamsters' President Dave Beck and Brewster will be summoned for questioning on a charge that they schemed to control Oregon's law enforcement from a local level on up to the governor's chair." (R.509).

By March 22, 1957, articles by local newspaper

reporters said:

"The committee said * * * that \$250,000 had been taken from Teamster's funds * * * and used for Beck's personal benefit" R.513)

On March 26, 1957, petitioner was called before the Committee and Seattle newspapers reported in front page headlines (R.517) "Beck Takes 5th Amendment, President of Teamster's 'Very Definitely' Thinks Records Might Incriminate Him".

By March 27, 1957, a Seattle Television station advertised exclusive "live" television of Dave Beck at the hearings. About 9¾ hours of the day's broadcast were devoted to the hearings. A news report stated that radio broadcasts of the previous day of petitioner's appearance before the Committee had brought an "astounding response" and that the station's telephone switchboard "was swamped with thousands of calls, more than for any other broadcast." (R.516).

Local interest was so acute that films of the hearings were made and flown immediately to the Seattle-Tacoma area for telecast at length and at peak viewing hours (R. 503-504).

By April 12, 1957, U.S. News & World Report captioned an article:

"Take a look around Seattle these days and you find what a Senate inquiry can do to a top labor leader in his own home town." (R.531)

On May 3, 1957, petitioner was indicted in the neighboring city of Tacoma for alleged income tax evasion, a fact announced in block headlines in local

As four of the judges below pointed out:

featured front-page headlines in large, heavy type, in which the more sensational excerpts from that day's testimony or other proceedings of the Committee were flamboyantly displayed." (R. 864-5.)

Petitioner had, of course, claimed protection of the 5th Amendment upon advice of counsel. (R.504)

[&]quot;Because appellant was then, and since childhood had been, a resident of Seattle, and for the preceding thirty years had been a labor leader of national reputation, this area was the focal point for the dissemination of the highly derogatory publicity concerning appellant which resulted from the Committee hearings. The local press featured front page headlines in large, heavy type, in

newspapers with front page headlines (R. 534) simultaneously announcing the appointment of former Seattle Mayor Devin as Chief Special Prosecutor before the grand jury (R. 535) which had been called "to investigate possible misuse of Teamster's Union funds by international president Dave Beck." (R. 536).

Petitioner was called as a witness before the Senate Committee on May 8, 1957. His attorney, previous to any interrogation, pointed out that there was a pending tax indictment against the defendant and asked that the witness be excused until disposition of the tax case (R. 650-651). The Committee was advised by petitioner's attorney that he would necessarily advise the witness to claim the protection of the Fifth Amendment if he were questioned

Reporting from Washington, a staff reporter for the Seattle Times said Committee Counsel was directed to read the "52 accusations of misuse of authority, position and trust" to the witness and "gave Beck a chance to comment about them point by point." (R. 555). Petitioner, of course, claimed the protection of the Fifth Amendment as his attorney advised him and as the Committee had been informed.

The torrent of headlines continued unabated for the next few weeks, the Committee reports being augmented by publicity concerning the tax evasion indictments and the pending grand jury:

"Senate Probe Lifts Lid on Beck Beer Business Use of Union Money Related" (R. 537)

"Beck Profit from Trust Fund of Widow Told" (R.540)

"'Greed and Avarice' Assailed by Prober" (R.541

"Mail Fraud Possible in Deal, Says Solon" (R.541)

"BECK APPARENTLY STOLE \$300,000 FROM UNION, SAYS PROBE AID" (R. 544, 545)

"BECK MISUSED UNION POSITIONS IN 52 INSTANCES, SAY PROBERS" (R. 552)

"Senate Document Charges Beck 'Took' \$300,000.00" (R.557)

"McClellan Blasts Beck for 'Rascality' 5th Involved Sixty Times" (R.558)

"'Beckadillos' Blasted As Incredible By Bishop Bayne" (R.650)

"Beck Actions Hit By Bishop Bayne" (R.561)

"Beck Ousted from A.F.L.-C.I.O. Post—Teamster Chief Found Guilty of 'Violating Trust'." (R.563)

These headlines were from the two largest newspapers in King County. They are illustrative only. In fact "there were thousands of additional and similar reports published in the Seattle Post-Inteligencer, the Seattle Times, and in other daily newspapers published in or circulated throughout the State of Washington" (R. 502). There was also, of ourse, massive radio and television coverage (not eproducible, of course, in the record) leaving at east as great an impact. Such publicity was so prevlent, particularly in King County, that it is refered to as "saturation" coverage—"news coverage designed by one or another media of news transmision to reach the maximum proportion of persons n a given community" (R. 503). Out of the thouands of articles hostile to petitioner, his attorneys

found none "which suggest that opinion be reserved pending trial." (R.502).

On May 20, 1957, the very day the grand jury convened, Senator McClellan was reported to have "bluntly rejected an assertion by the Americal Civil Liberties Union that Senate Investigators have infringed Dave Beck's rights, specifically by McClellan using the word "theft" in relation to Beck's handling of Teamster Union funds. Senator McClellan was quoted as saying:

"May I say that the committee has not convicted Mr. Beck of any crime, although it is my belief that he has committed many criminal offenses." (R. 656).

B. Grand Jury Impanellment

At 9:30 a.m. on May 20, 1957 those summoned for grand jury duty appeared in the Superior Count for King County. The Court advised those assembled of the technical qualifications of jurors, is an elector and taxpayer of the State, resident of the county for one year, over 21 years old, of sound mind and literate (R. 312). An undisclosed number of jurors were excused during proceedings

Four of the judges below characterized the news barrage a follows:

"These comments, which were extremely derogators to appellant, were widely circulated by all news medit throughout the United States and particularly in the Seattle area. In these comments, appellant was characterized as a thief, and it was asserted that he was guilty of fraud and other illegal conduct with respect to his management of the affairs of the Teamsters Union as it principal officer in the eleven western states, and late in his position as its international president (R. 866).

"The amount, intensity and derogatory nature of the publicity received by appellant during this period is with out precedent in the State of Washington." (R. 867).

which took place off the record. Seventeen jurors were called and individual interrogation of the jurors by the Court commenced (R. 313).

No questions were asked as to whether or not any member or the panel as a whole had read, seen or heard publicity or had any bias or prejudice against unions in general, any teamsters union or any official of any union. In general, each prospective grand juror was asked if he had ever been a member of any Teamster Union, knew any officer of a Teamsters Union or had ever been an officer in any union. Questioning was then usually concluded by the Court's inquiry:

"Is there anything about service on this grand jury that might embarrass you?"

One prospective juror volunteered:

"I am prejudiced to this particular case after reading the newspapers and watching television and comment." (R.317) (emphasis supplied) •.

A second prospective juror said:

"I am awful prejudiced on the case is all I can say. I followed it from . . ." (R.319).

Upon completion of the interrogation, the two witnesses who had volunteered prejudice were excused (Moreau, R. 317-322, and Mabe (R. 319, 322), together with the only grand juror then a member of a Teamsters local union (Johnson R.318, 322). In addition, the only juror who was asked if he was "conscious of any bias, prejudice or sympathy in this case at all" and who replied that he, if required

This comment indicates the knowledge of all present that the grand jury was to investigate petitioner in the light of the existing publicity. At this point, so far as the record shows, there had been no mention of petitioner by name or particular office.

to sit, "could do so analyzing the evidence and doing what is right and fair" (R.320) was also excused (Mr. Eyman, R. 322). One other juror, then engaged as assistant secretary of the Washington State Senate, was also excused (Hagan, R. 321, 322).

Five more jurors were called to replace those accused.' One was excused without further questioning (R. 325). The twenty-third grand juror, who was to become the foreman, was seated after perfunctory questioning, and the seventeen members seated in the jury box were sworn (R.326).

No juror was interrogated as to any state of mind or opinion which would or might tend to make him unable to act impartially and without prejudice to ward petitioner or other officers of the Teamster's Union, although the court asked one prospective grand juror whether he was acquainted with Mr. Brewster or Mr. Beck (R. 324), and made reference to "officers of the Teamsters Union" in his charge (R. 329).

C. Charge to the Grand Juny

Immediately after the grand jury was sworn, the court addressed them as follows:

"Members of the grand jury. What are the duties of the grand jury? Why has it been called? How does it operate?..."

Answering these questions for the jurors, the court continued (in part):

"The institution of the grand jury comes to

time previously in a fashion not disclosed by the record, it.

Raynor: "I talked to you a few minutes ago." (R. 323)
and Johnson: "We have talked to you several times.... We know all about your business and everything." (R. 323).

us from the common law of England where the grand jury's original function, curiously enough, was to stand as a buffer between the King of England and the citizens. It's purpose was to prevent unjust prosecution by the Crown. . . .

"...its use has been greatly limited in recent years, and in many states, like our own, it has been used so seldom that most people, even attorneys, are unfamiliar with its underlying purpose." (R. 327.)

After instructing the grand jurors as to its subpoena powers, assistance from prosecutors, secrecy of proceedings and statutory powers and duties

the court said:

"We come now to the purpose of this grand jury and the reasons which the judges of this court thought sufficient to justify the expense to the county, and the inconvenience to and sacrifice by you, which this grand jury session

will require.

"It seems unnecessary to review the recent testimony before a Senate Investigating Committee except to say that disclosures have been made indicating that officers of the Teamsters union have, through trick and device, embezzled or stolen hundreds of thousands of dollars of the funds of that union—money which had come to the union from the dues of its members. It has been alleged that many of

Four judges below "disagree completely . . . as to the function of a grand jury in this case" (R. 829) but did not attempt to disagree with this obvious historical truth of the common law and its applicability to Washington law as it existed at the time of statehood.

There have been only eight grand jury sessions in King County since 1917, including the one that indicted petitioner. (R. 381, n. 7).

The court said these powers "should be exercised sparingly or not at all." (R. 329).

was siphoned out of the union treasury, occurred in King County. Such crimes, if committed, cannot be punished under Federal Law, or under any law other than that of the State of Washington, and prosecution must take place in King County. The necessary criminal charges can only be brought in this county upon indictment by the grand jury or information filed by the prosecuting attorney.

"The president of the Teamsters Union has publicly declared that the money he received from the union was a loan which he has repaid. This presents a question of fact, the truth of

which is for you to ascertain."

"To completely investigate all of these items may be beyond the energy and endurance of yourselves, the prosecutors and investigating staff. The financial burden of such a complete investigation may be beyond the resources of King County. I urge you to do all that you can within practical limitations to ascertain the truth or falsity of these charges." (R. 329-330).

"You have a most serious task to perform and know you realize it is being performed and is to be performed by a grand jury picked at random from among the citizens in this community, and thus we hope to keep the law close to the people. It is a tremendous responsibility, and I wish you well in your work." (R. 331).

No admonition was given to the grand jurors to base their deliberations solely upon evidence presented to them. No warning was given to the grand jurors that radio, television and newspaper reports were not evidence, that no inference of guilt should be drawn against one who invokes the Fifth Amendment privilege, and that their functions and de-

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liberations should be free of any bias or prejudice.

The words used were to the opposite effect. The "purpose" of the grand jury, justifying "expense to the county" and "inconvenience and sacrifice" by the jurors was to consider "testimony before a Senate Investigating Committee" that petitioner had "embezzled or stolen hundreds of thousands of dollars."

The jurors were told that "many of these transactions, through which the money was siphoned out of the Union treasury, occurred in King County." Finally, the jury was told that these crimes were not punishable "under any law other than that of the State of Washington, and prosecution must take place in King County. "The necessary criminal charges can only be brought in this county..."

The grand jurors returned to their homes, television, radios, newspapers, friends, neighbors and business associates for "two or three weeks" (R. 331) while the prosecutor's staff prepared subpoe-

nas and made investigation.

D. Hostile Publicity During Grand Jury Session.

From the time the jury was sworn to the date of his indictment, petitioner remained the center of an

unabating maelstrom of charges.

By way of illustration from some of the exhibits in the record (which are in turn only a small portion of the total number of publications and references), the following occurred:

McClellan Lays
'Many Criminal'
Acts to Beck
(May 1, 1957, R. 568)

THE CASE AGAINST DAVE BECK AS SENATORS SEE IT (May 24, 1957, R. 569)

Reflecting against the particular focus and impact of the publicity, TIME Magazine on May 27, 1957 published an article under the heading

A CITY ASHAMED

Dave Beek Is on Souttle's Conscience
(R. 573)

\$30,000 Reported Paid McEvoy; Witnesses Take 'Pifth' 221 Times (R. 577)

"Beck, Jr., who even refused to say whether he know his father, took shelter behind the amendment 130 times, following the example of Beck, Sr. who refused to answer 210 times in three appearances before the committee. (June 11, 1967, R. 577).

BECK JR. TAKES 5TH 130 TIMES SR. ARRAIGNED IN TAX CASE (June 5, 1957, R. 500)

The proceedings of the grand jury were extensively reported along with the denial by the Federal District Court Judge having jurisdiction of the tax evasion indictment, of petitioner's application to leave the judicial District, and statements of the King County Procecuting Attorney praising the efforts of the special procecutors (R. 656-658).

E. Misconduct of the Prosecutors in the Grand Jury

On June 20, 1937, Fred Verschueren, Jr. was called as a witness by the grand jury (R. 349). He was interrogated first by Mayor Devin (R. 349).

then by Mr. Regal (R. 361), then by Mr. Lawrence (R. 365) and further cross-examined by each (R. 368, 370, 372, 373, 375). He was called on July 10, 1957 (R. 378). He was examined and repeatedly cross-examined by Messrs. Devin (R. 378, 386, 476), Regal (R. 398, 433, 454, 462, 474, 479) and Carrol (R. 412-413, 452, 453, 457, 467, 479).

Petitioner's attorneys were informed and the newspapers reported that "a considerable amount of pounding on the table and loud voices" were heard outside of the grand jury room (R. 490).

Accordingly, upon motion of the defendant the testimony of this witness was transcribed. The court, however, refused to permit defendants to obtain the transcript prior to trial but ordered it scaled and to be available to defendant only upon conviction and appeal (R. 18)."

The Court said his perusal of the testimony indicated that such intemperate statements did not appear to have resulted in the witness changing his testimony to the prejudice of the defendant. By way of an "extreme example" the court explained:

"Suppose a witness before a Grand Jury was tortured physically and as a result of that physical torture he gave false testimony which resulted in an indictment. Then I say that a defendant would have, or probably a right to have that indictment set aside, if that testimony was false. Suppose, however, that after such physical torture the witness never changed any of his testimony in any degree. Now, of course, he would have his remedy

The court had read "this testimony through and find in the testimony numerous references by one or more of the prosecuting officials to the statute on perjury, to a statement of claimed dishelief of the statements or testimony made by one of (sic) the other of these witnesses." (R. 675).

against the prosecuting officials in either a criminal or civil action but how has the defendant's rights been affected." (R. 675).

The transcript of this witness' testimony shows (among many other instances) the following threats and testimony by prosecutors:

"Q. Mr. Verschueren, I want to warn you at this time that you are under oath and that what you say here, if found to be false, can be perjury for testifying falsely under oath.

A. Yes sir.

Q. You are under oath.

A. Yes sir.

Q. And the penalty for perjury is fifteen years in the penitentiary, it is a felony.

A. Yes sir.

Q. Now, I want to give you every opportunity to state the truth.

A. Yes sir.

Q. You appear to have already changed your testimony from what it was a few moments ago.

A. No sir. (R.389)

"Q. I want you to tell the truth.

A. I am telling the truth.

Q. There is no reason for you to go to the penitentiary for somebody else.

A. I am not even thinking about that, sir. Q. Well, I am thinking about that, sir."

(R.401)

"Q. When I get through with you Mr. Regal is going to take over again. We don't think you are telling the truth." (R. 420).

"Q. Then you . . . concoct this fallacious story." (R. 436).

"Q. ... No person in this room believes you ... you are standing very close to a perjury charge, if not aiding and abetting grand larceny."
(R. 436-437).

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"Q. You can't get a \$500 bill from a teller because they don't keep them there." (R. 462)

Q. Did you know they don't keep \$500 bills at all behind those windows . . . Did you know that?

A. No sir, I did not.

Q. You know it now.

A. No, I don't.

Q. I am telling you now. They don't keep them there. You can't get a \$500 bill without making a request for it. . .

A. No, I did not know that.

Q. We are going to assume, just for the value of this discussion then, that is correct because I know it to be correct." (R. 462)

F. Post Indictment and Pre-Trial Publicity.

The indictment of the King County Grand Jury was of course, the subject of banner headlines in all local newspapers (R. 590) with comments by the prosecutor of evidence he intended to present at the trial (R. 591) and praise from counsel for the Senate Committee (R. 593).

"The conclusion must be that the examination of witnesses before a grand jury has never been intended to be

a matter of judicial control . . ." (R. 837).

The Appendix to the opinion of four judges below excerpts many more instances of prejudical conduct from this testimony (R. 887-895). These judges felt it probable that "his testimony was disbelieved by the grand jury solely as a result of the conduct of the prosecution officers." (R. 881). The remaining four judges did not argue or discuss the point beyond saying:

The Committee continued to produce headlines:

Probe Told Beck OK'd 'Phony' Units (R. 603)

National magazines published comments on the hearings.

Can Labor Live Down Dave Beck. (SATUR-DAY EVENING POST. R. 605)

On August 28, 1957, a federal grand jury indicted petitioner and others for additional alleged income tax evasion counts. Papers headlined the news.

Grand Jurors Unanimous on Indictments (R. 609, see also R. 631, 632, 633).

In September a member of the Senate Committee who "came to the Northwest to get away from phones and television" was interviewed in Seattle. He was quoted as saying:

"The Beck . . . phases of the hearings are all wrapped up and in the hands of the courts." (R. 615).

Alas, on October 10, 1957, the Chairman of the Senate Committee was quoted as saying

"We have found several instances where Mr. Dave Beck, the international president, instructed the credentials committee to disregard the Teamsters' constitution.

"Without this dictatorial action on the part of Mr. Beck, Mr. Hoffa, the candidate of his choosing, could not have been elected president of the Teamsters." (R. 682, 683).

And on October 29, 1957, the committee produced a small headline over \$78.75

Beek's Way to Tobin Funeral Paid by Sears (R. 697, 700) The Committee's interrogation on November 1, 1957, led to such headlines as:

Former N. Y. Labor Official Says He Was Paid by Beck (R. 706, see R. 705, 707)

On November 5, 1957, alleged co-conspirators in the federal tax indictments were called before the committee. The relationship of these witnesses to petitioner was duly noted under such banner headlines as

> Shefferman and Son Invoke Fifth 56 Times (R. 709)

> > -0-

Shefferman Won't Tell Racket Probe If He Lied

> Dave Beck's Confidante Testifies 2 Union Aids Also Silent (R. 710)

On November 12, 1957, the trial of Dave Beck, Jr. commenced, accompanied by pictures, daily newspaper headlines, television and all of the other accoutrements of a public spectacle."

The selection of the jurors for the Dave Beck, Jr. trial was reported extensively, including the questions asked of prospective jurors and the answers which would be disqualifying (R. 769, 750, 751, 762).

The prosecutors suggested that the judge first assigned the case should disqualify himself and filed an affidavit of prejudice against the second judge assigned to the trial. Such an affidavit disqualifies the judge under local practice. R. 746, 748). Petitioner's son, however, was charged with this delay in the local newspapers.

There were also extensive news reports of those portions of the Dave Beck, Jr. trial deemed most newsworthy by representatives of the press. The papers reported the prosecutor's charge that Free Verschuren, Jr. and another "were avoiding subpoenas" (R. 758). The prosecutor did not call him as a witness when he appeared at the next day of the trial, but "told newsmen he did not call Verschueren as a witness because he could not vouch for Verscheuren's testimony" (R. 761, 764). When called as a witness by the defense Verschueren was charged by the prosecutor during cross-examination with having "concocted" his testimony. Newspapers of that day inadvertently lend professional judgment to support petitioner's views of the inflammatory nature of the same charge previously made in the secrecy of the grand jury room. Four column banner headlines proclaimed:

WITNESS DENIES "CONCOCTING STORY" FOR DEFENSE OF BECK, JR.

(R. 768)

Petitioner's own testimony at the trial, disputes over production of grand jury transcripts, and arguments of counsel all were reported in the press (R. 778-785) and on television and radio throughout the trial of petitioner's son.

Announcement of the guilty verdict of Dave Beck, Jr. at 9:33 p.m., November 23, 1957, was the banner news in the following Sunday morning headlines of both papers (R. 791, 792.)

The trial of petitioner commenced on December 2, 1957 (R. 30).

Although not part of this record, the court deferred gentence of Dave Beck, Jr. upon condition that he abstain from any union employment or activities and the charge against him has since been dismissed.

6. Impanelment of Trial Jurors.

After a brief interrogation of the twelve jurors first seated in the jury box which revealed that all of the jurors had heard of the case and heard opinions as to the guilt or innocence of petitioner (R. 51), the Court said:

"Now intelligent persons know that impressions they have received from what they have read in the newspapers or heard on the radio, or seen, read or heard on the TV, are not always true. No intelligent person would rest a decision upon such an impression without a more formal and more convincing type of proof. Now with those factors in mind, as reference to this subject, I wish to ask you this question. I wish you to search your hearts and minds for the answer. (emphasis supplied)

"Now if any of you from what you have read do feel that you have in your mind . . . such an opinion as would require evidence to remove by either side, please hold up your hands." (R. 53, repeated in substance at R. 181, 183,

267).

Despite the express invitation to acknowledge their own intelligence, at least 19 jurors expressed varying degrees of prejudice against petitioner.

Some typical statements of prospective

jurors were:

"I truthfully don't believe I can be unpre-

judiced in the case." (R. 61)

"... there has been a great deal of publicity on this particular case and on the Teamsters in general ... and truthfully, sir, I would myself not wish to be in the position of a juror where a person who has been exposed to as much comment as I have, would be." (R. 187)

"... there has been a lot of adverse publicity and I don't know, of course I haven't actually formed a sure opinion as to whether or not funds have been misappropriated... But there has been a lot of evidence brought out to indicate such could have been the case." (R. 195)

"I may have a bias in the back of my mind." (R. 198)

"I am afraid I am biased." (R.200)

"I don't believe I could be impartial, that is, serve with impartiality." (R. 216)

"I have a preconceived impression or opinion. I don't believe I could be impartial." R. 216.

All of the prospective jurors, including those ultimately selected to try the case had read about the defendant in the newspapers or had seen the televised proceedings of petitioner's appearance before the Senate Committee or both.

It took from the morning of December 2, 1957 through the afternoon of December 4, 1957, to find 12 jurors out of 58 examined who were willing to serve and expressly disclaimed conscious or unconscious bias against petitioner."

H. Motions for Continuance and Change of Venue.

Petitioner made four motions for continuance based upon the publicity and prejudice existing at the time, supported in each instance by affidavits or testimony. The dates, time requested, evidence or affidavits in opposition and disposition of each of the motions may be most concisely shown in tabular form:

An illuminating and humorous incident occurred when a prospective female juror did not appear to comprehend the court's inquiry as to her state of mind and ability to try the case impartially, but stated: "I have seen him on TV and I wanted to shake him or something, but I wouldn't know."

(R, 298). The court excused her on its own motion.

¹⁶ Petitioner, of course, exhausted his peremptory challenges.

Date of Motion	Continuance in	vidence Oppo- sition	
Oct. 2, 1957 (R.4)	(1) not earlier than May 1, 1958 or	None	Denied
	(2) date court de- termines defendant might receive a fair trial	None	Denied
	(3) Sufficient to afford counsel time to prepare a defense		5 weeks granted (R. 8)
Nov. 7, 1957 (R.19-21)	One month or sufficient to allow prejudice and hostility to subside		Denied Nov. 8, 1957 (R. 22)
Nov.26,1957 (R. 22)	To Jan. 6, 1958 (R. 725, 729)	None	Denied Nov. 29, 1957 (R. 26)
Dec. 2, 1957 [R. 30, 36]	Until the swearing in of a new jury panel in 37 days	None	Denied Dec. 2, 1957 (R. 40)

Motions for Change of Venue

Oct. 3, 1957 Whatcom or Snoho-None Denied (R.5) mish Counties Oct. 11, 1957 (R.9)

The state never filed any affidavits controverting any fact or conclusion relating to the publication, broadcast or telecast of adverse publicity relating to the petitioner;" never asserted in argument or

[&]quot;Petitioner's attorney averred under oath that of approximately 50 practicing attorneys he had consulted, without exception "all of said attorneys have stated in their opinion it would be impossible for either of the defendants [petitioner and his son] to be accorded a fair and impartial trial in this jurisdiction." (R. 504) The prosecutors did not even express their own opinion to the contrary on this ultimate fact.

otherwise that such publicity was not extremely prejudicial to appellant; never claimed that a delay in the time of trial or transfer to another county would result in added expense or loss of necessary evidence or witnesses.

The only objections raised by the State to a continuance or change of venue, maintained to all of the motions were that it

"will not serve the best interests of justice and is to serve only the purpose of delaying the orderly administration of justice in the courts

of this State." (R. 727) and

"There is no showing that the defendant will be any less busy three weeks, three months three years from now than he is now, and for that reason the State would like to resist any effort by the defendant on this motion to get a continuance in this case." (R. 728)

No court has ever made any finding of fact that prejudice did not exist against petitioner, prior to his indictment and extending through the time of trial.

The only reason ever advanced for denying a continuance or change of venue "in the interests of the orderly administration of justice in the State of Washington was the ad hominem conclusion of a Superior Court Judge:

"... I am not at all impressed with your contention that Dave Beck, Sr. cannot have a fair trial in this community at this time. I believe arguments such as these do poor credit to the intelligence and fairness of the high-calibered jurors that we have in this community, and am satisfied from observing the trial of cases for many years here and observing the type and quality of jurors that we have had, particularly in recent years and recent months that is is possible to find 12 jurors who cal

give a defendant including this defendant, just as fair a trial in December as one could be found in May, I therefore will deny your motion for a long continuance." (R. 726)"

This magnificent non-sequitur" was adopted verbatim by four judges below (R. 840-841), while the other four judges of the court below felt it "unreatistic to believe that a very substantial number of the citizens of the community had not adopted, consciously or unconsciously, an attitude of bias and prejudice toward appellant" (R. 867), and that "if, in the face of all the publicity regarding the Senate Committee hearings . . . anyone realistically could believe there was no showing of bias and prejudice against appellant at the time of the impanelment of the grand jury, then it is impossible ever for anyone to make such a showing." (R. 885).

I. Prejudice Resulting from the Grand Jury Proceedings as Affecting the Trial.

Petitioner asserts that the facts, without argument, show the dire consequences flowing from use of the grand jury in this case under these circumstances. A fair understanding of the functional difference between accusation by information and by grand jury is best illustrated by the issues that

This represented a firmer position than that expressed by the same judge on October 7, 1957 when he incorporated in his formal order denying a previous request for continuance, his opinion that "the attitude toward the defendant within King County will not be substantially different in May, 1958 than it is at the present time, or will only be slightly different." (emphasis supplied) (R. 8).

Petitioner ironically finds himself accused of denigrating everyone in Seattle and the jury system itself, while the judge's own decision was based upon the tacit assumption that petitioner's case had been so hopelessly prejudiced that neither time nor distance could eradicate the stain.

arose only because the State elected to utilize the latter method." These incidents extended throughout the trial and included final argument of the prosecutors. The practical and real prejudice to appellant of the abuse of the grand jury proceedings are:

1. Petitioner's secretary, Marcella Guiry, had claimed the Fifth Amendment upon her interrogation by the Grand Jury. Prior to her attendance at the trial as a witness for the defense, counsel consulted in chambers as to the scope and manner of cross examination. The Court advised the prosecutor that it would not be "proper impeachment," "would be unconstitutional" and that "questions should not be asked concerning those questions and answers before the grand jury." The prosecution nevertheless cross-examined the witness by asking in open court whether or not she had seen a certain exhibit when testifying before the grand jury. This question was immediately followed by the question as to whether her answer before the grand jury was "the same then as it is now." This, of course, required petitioner's counsel either to object before the jury, permit an apparently inconsistent answer to be given, or disclose to the jury that at some previous occasion the witness had claimed the Fifth Amendment. (See R. 845).

This clever tactical trial maneuver could not have occurred except for the fact that the State elected

practice of accusation by information in the State of Washington necessarily relegated grand juries to an unrestrained arm of the State used "to assist a prosecutor in investigating conditions and people insulated from investigation by the usual procedures." (R. 832). The other four judges, correctly in petitioner's view, said that whatever procedure the State chose to adopt, it should comply with the law.

to prosecute petitioner through a grand jury proceeding.

2. The prosecution, as part of its case, called the chief special prosecutor, former Mayor Devin, to testify from recollection what petitioner had told the grand jury some six months previously. The prosecutors carefully refrained from exhibiting a transcript of the testimony to Mayor Devin befor he testified," and refused to introduce the transcript of petitioner's testimony. (See R. 844).

Absent grand jury proceedings, the State would have had no opportunity to present the former Mayor of Seattle as a witness for the prosecution or any version of his testimony filtered through six months of obloquy.

3. Fred Verschueren, Jr., an important witness for the defense, had been threatened by four prosecution counsel during grand jury proceedings. He had been cross-examined for hours by the prosecutors in secret. Within two weeks of petitioner's trial he was publicly accused of evading service of a subpoena to testify for the State. When he appeared forthwith at the earlier trial he was not called by the prosecution. The prosecution advised the newspapers that he was not called because the State could not vouch for his testimony. When he testified at the earlier trial he was charged with "concecting" a story for the benefit of the petitioner.

Absent the grand jury proceedings this witness could not have been so thoroughly and wholly unjustifiably defamed and intimidated prior to peti-

This would have been grounds for demanding a copy of the transcript to determine if the testimony was a refreshed present collection or past recollection recorded.

tioner's trial as to preclude his use as a witness in petitioner's behalf.

4. During the grand jury proceedings an accountant from the firm of CPA's retained by petitioner produced a preliminary worksheet he had prepared from books kept by petitioner's secretary. This worksheet contained numerous errors on its face and its existence was never known to petitioner. The books from which it was taken were not kept by petitioner and were never shown to or exhibited to him. At the trial the State refused to accept the original books when offered by petitioner. The worksheet was the only evidence relied upon by the State to show that petitioner had any knowledge or guilty intention concerning the transaction upon which he was convicted. It was admitted into evidence solely as the document produced by the CPA before the grand jury. (See R. 848, 849).

Absent the grand jury proceedings no conceivable basis under the law could have justified admission of this exhibit into evidence for any purpose.

5. Finally, the prosecutor upon final argument neatly combined both the plethora of publicity and the aura of grand jury impartiality into his final argument.

"Mr. Beck testified before the Grand Jury, and the Grand Jury was not made up of four ogres who were breathing down the neck of anybody. It was made up of 17 people just like you, 17 citizens selected to sit on that Grand Jury, and 17 people after they heard the testimony of Mr. Regal (sic) and Mr. Verschueren, Jr., returned an indictment . . ." (R. 310).

"Now we get down to the point where everything is deadly serious. You have a tremendous responsibility. Counsel refers to all this terrible publicity. It is true. The eyes of the entire world probably are upon you right now, and the evidence that has been presented here against this defendant has been widespread. There is no question about that. You should return a proper verdict, that is your responsibility. You are the ones who are going to have to look at yourselves the rest of your lives. You are the ones who are going to have to be with your neighbors and friends and hold your head up high and say, 'I did what my heart and mind told me." (R. 311).

Up until the affirmance by an equally divided court the state never questioned petitioner's right to a fair and impartial grand jury under Washington law. On the contrary, the state conceded that "Except for citing the well-recognized rule that grand juries should be impartial and unprejudiced [petitioner's] cases are not otherwise applicable." See R. 875, n. 6.

In summary, the grand jury proceedings were infected with the massive public clamor against petitioner. The proceeding itself become the focus of the trial and a substantial basis for conviction. No court has yet suggested any rule of law or rational civilized purpose in the procedures adopted except vacuous obeisance to the "interests of justice." In fact, petitioner suffered the savage application of legal lynching suavely masquerading as the spirit of the community.

VI ARGUMENT

A. Summary of Argument

The factual crux of this case is that the entire proceding formed an integral part of the Senate investigating committee's sustained attack upon petitioner in the year 1957. Petitioner stands convicted today because, and solely because, of the committee's successful effort to destroy him as a public figure. This fact has been publicly announced by the committee counsel, and is irresistably borne out by the record.

Petitioner does not contend that he, or anyone else subjected to open congressional hearings, should be immune to prosecution on charges resulting therefrom. What he does contend is that when such hearings are held by a committee and televised nationwide with clear foreknowledge of the results; when they are accompanied and followed by repeated statements of high government officials branding the citizen a thief and a symbol of corruption; and when the charges are pressed long enough and hard enough to infect the entire community with prejudice—then petitioner, or anyone so situated, is entitled under the Fourteenth Amendment (1) to have his case considered by a grand jury which has at least been instructed to act impartially, rather than by one whose manifest bias is exacerbated by the judge and prosecutor; and (2) to be tried by an impartial petit jury even if the only apparent way to obtain one is to allow a reasonable continuance to give the effects of the hostile publicity some chance to abate.

When the activities of the Senate committee began in early 1957, petitioner was president of a

large international labor union. As a long-time resident of Seattle, his name was of course known to virtually everyone in that community. The committee first required him to appear before it (and a television audience numbering in the tens of millions) in March, 1957. The assault upon him in the weeks and months which followed has been described by four of the judges below as "without precedent in the State of Washington."

Petitioner responded by advising the committee in writing that, if required to appear, he would be obliged to assert the privilege against self-incrimination as to any questions touching on his financial affairs. He was then pending indictment by a federal grand jury on tax fraud charges. The committee nevertheless chose to insist upon his appearance, to force him repeatedly to invoke the privilege, and to denounce him for alleged large-scale misappropriation of union funds.

In May, 1957 the process was repeated. By this time petitioner stood indicted in two counts under the revenue laws, and was awaiting indictment on others. Nevertheless he was again interrogated at length, much "evidence" of his alleged misuse of funds was produced, and he was repeatedly attacked for asserting his privilege.

In the weeks and months which followed a flood of publicity hostile to petitioner inundated the country, and particularly King County, Washington. There was virtually no letup until after petitioner was convicted and sentenced to fifteen years in prison. He was accused by the committee, and by countless others who accepted its charges as true, of embezzling over \$300,000 in union funds; of misusing his union trust in 52 instances; of be-

ing a labor racketer connected with vice; of being a symbol of corruption; and so on. In July he was indicted herein; in August he was indicted (with alleged co-conspirators) in seven additional tax fraud counts; in October the committee resumed its public hearings, concentrating on petitioner's alleged co-conspirators; in November his son and namesake was convicted on a larceny charge returned by the same grand jury; and the trial of petitioner began a week later.

The grand jury which returned the present indictment was convened on May 20, a few days after petitioner's second televised appearance before the committee. The public furor against him was then at a high pitch. All of the grand jurors knew they had been called specifically to consider charges against petitioner. In the face of this, the court made no effort whatever to excuse prejudiced jurors, to inquire into the existence of prejudice, or even to ask those present to act impartially. Instead, the judge advised the jurors of the reason for their being called; invited them to consider the extrajudicial matters by referring to the committee's "disclosures" that officers of the union (including petitioner) had embezzled hundreds of thousands of dollars; mentioned that King County was probably the only place where such offenses could be tried; and stated that petitioner had claimed the money was borrowed, which presented a factual issue for the grand jury to decide. During the grand jury procedings the prosecutors abused witnesses whose testimony tended to show innocence by accusing them of lying, threatening them with imprisonment for perjury, and the like. The indictment was returned on July 12.

The selection of a trial jury began on December 2, after an interim of unremitting publicity. A high percentage of the veniremen were excused for admitted prejudice which would require evidence to remove. Of the twelve selected after petitioner exhausted his peremptory challenges, all had heard of the case, and eleven admitted having seen and heard the pretrial publicity stemming from the committee hearings.

On this record it is strikingly clear that petitioner was given no chance to be either indicted or tried by jurors who could consider him or his case impartially. At both the grand and petit jury stages he was denied due process and equal protection.

The constitutional right to an impartial grand jury is well established by many prior decisions of this Court, most of which have dealt in some manner with the exclusion of minority groups from jury membership. Implicit in all such decisions, and explicit in some, is the accused's right to have his case considered impartially rather than by per-sons whose preconceived opinions will lead them to indict him. The institution of the grand jury has been held by this Court to be not a sword in the prosecutor's hand, but a shield between him and the public. Here, it became a sword. To paraphrase one of the opinions below, if ever there was a case where constitutional guarantees of fairness should have been scrupulously observed, this was it. Yet the court and prosecutors, far from trying to protect petitioner from the public furor against him, deliberately worsened the situation by pointing to the congressional committee's "disclosures". No grand juror could be expected to be impartial in this setting, and indeed none was asked to be. The accusatory process here used thus denied petitioner due process. In addition, it denied him equal protection: a per curiam opinion of the court below has purported by a four-to-four vote (the judges being equally divided on the merits) to deprive petitioner of the protection afforded by the long-standing Washington State statutory and decisional rule that grand jurors must be impartial in order to serve.

As to the denial of petitioner's motions for change of venue, continuance and challenge to the panel-all designed to obtain trial by impartial petit jurors—this Court has held that trial by a fair tribunal is one of the basic elements of due process guaranteed in state prosecutions by the Fourteenth Amendment. If trial by jury is employed, the right is to be judged by jurors who can conscientiously decide the case on the evidence alone, free of undue hostility toward the accused. Where community prejudice is so great that such a panel cannot be obtained, the law requires relief in the form of a change of venue or reasonable continuance to allow the public bias some chance to abate. The period asked by petitioner here was six months, which unquestionably would have been reasonable for the needs of the prosecution as well as the accused. The motion was denied on the untenable ground that no guarantee could be given that the public sentiment would improve in six months, although petitioner asked only the chance that it might. Further, the community prejudice against petitioner was not the result of the private enterprise of newspapers, but the clearly intended consequence of a govern-mental committee which chose to destroy him publicly with full knowledge that he was pending trial on criminal charges. In these circumstances, the constitutional requirements of fairness are doubly

compelling.

In all cases of this type it is impossible to show the community prejudice conclusively by direct evidence. It is also difficult, at a distance of four years, to reconstruct a transitory period of public furor or hysteria through exhibits and documents. This Court has recognied these problems in holding that prejudice need not be shown directly, and that the assurances of jurors that they will act impartially must be disregarded where the surounding conditions make their accuracy unlikely. In this case the exhibits, the committee hearings transcripts, and the entire history of the interrelated proceedings show, as clearly as can be shown, that both panels of jurors necessarily must have been motivated by the massive, government-engendered publicity. Petitioner was overwhelmed by a single, continuous wave of hostility and denunciation which began in March and ended only with his conviction in December. Against this, his modest requests for procedural relief were denied and availed nothing. Fundamental fairness demands that his conviction be vacated.

B. The State of Washington Denied Petitioner Due Process and Equal Protection of Law with Respect to Grand Jury Proceedings.

This Court has repeatedly been called upon to consider the accusatory methods employed in State criminal actions and to determine whether Grand Jury proceedings and other methods of accusation meet those standards of fairness which are required by the due process and equal protection clauses of the Fourteenth Amendment to the Constitution of the United States.

Cassell v. Texas, 339 U. S. 282; Hernandez v. Texas, 347 U. S. 475; Re William Oliver, 333 U. S. 257; State v. Pierre, 306 U. S. 354.

In considering cases of this nature, this Court has invariably expressed the view that grand jurors must be fair and impartial, and that the use of methods of selecting grand jurors which result or might result in a biased or prejudiced Grand Jury requires a dismissal of the indictment. The decisions of the Court on this point have been based upon both the due process and equal protection of the law clauses of the Fourteenth Amendment. See Annotation, 94 L. Ed. 856, at 857.

Thus, in Cassell v. Texas, 339 U. S. 282, this Court reversed a conviction because of discrimination in the selection of the Grand Jury. The opinion in that case commenced as follows: (339 U. S. 282-283)

"Review was sought in this case to determine whether there had been a violation by Texas of petitioner's federal constitutional right to a fair and impartial Grand Jury."

Similarly, in State v. Pierre, 306 U. S. 354, this Court held that the standards of impartiality requisite to service as a trial juror were likewise applicable to grand jurors.

The fundamental philosophy underlying the requirement that grand jurors be fair and impartial has been aptly stated by this Court, speaking through Mr. Justice Clark, in Hoffman v. United States, 341 U.S. 479, at 485:

"...continuing necessity that prosecutors and courts alike be 'alert to repress' any abuse of the investigatory power invoked, bearing in mind that while grand juries 'may proceed either upon their own knowledge or upon the

examination of witnesses, to inquire ... whether a crime cognizable by the court has been committed, 'Hale v. Henkel, 201 U. S. 43, 65, 50 L. ed. 652, 661, 28 S. Ct. 370 (1906), yet 'the most valuable function of the grand jury [has been] not only to examine into the commission of crimes, but to stand between the prosecutor and the accused.' Id. 201 U. S. at 59."

The following authorities likewise firmly demonstrate that at common law, as well as under the applicable constitutional provisions, grand juries must be selected in a manner which will conform to fundamental standards of fairness and result, insofar as possible, in an institution which will act fairly and impartially.

Field's Charge, 30 Fed., Cas. 992, No. 18255 (Cir. Ct. Cal. 1872);

1 Wharton on Criminal Law, (7th ed. 1874), pp 355, 366, § 452;

United States v. Wells. (D. C. Idaho, 1908), 163 Fed. 313.

The respondent, at p. 14 of its brief in opposition to the Petition for Certiorari herein, has apparently taken the position that the federal right to an impartial Grand Jury is limited to members of minority racial groups. But in Hernandez v. Texas, 347 U. S. 475, 477, this Court pointed out that the doctrine of equal protection extends beyond the bounds of race or color. This conclusion seems compelled by fundamental logic, for if there is no federal constitutional right on behalf of every accused person to a fair and impartial Grand Jury, what difference could it possibly make that members of the minority racial group to which a particular defendant belonged were systematically excluded from Grand Jury service? If the rule against such sys-

tematic exclusion is not designed to prevent accusation by a biased or prejudiced Grand Jury, it would seem to have no purpose at all.

The failure or refusal of the State of Washington to recognize petitioner's right to a fair and impartial Grand Jury, or at least to a Grand Jury which was impanelled in a manner which would prevent or tend to prevent the selection of biased and prejudiced grand jurors, and to have the charges and evidence considered by a Grand Jury which was at least instructed and directed to act fairly and impartially, constitutes a denial and deprivation of due process and equal protection of the law in contravention of the Fourteenth Amendment to the United States Constitution.

1. Petitioner was denied the right to an impartial and unbiased Grand Jury.

In its brief in the appellate proceedings in the Supreme Court of the State of Washington, respondent conceded, at p. 23 thereof, "the well-recognized rule that grand juries should be impartial and unprejudiced." (See R. 875, footnote 6.) Nevertheless, four judges of the State Supreme Court, who voted for affirmance of petitioner's conviction, held (R. 829):

"The Grand Jury in this state is not and was not intended to be a shield for the accused" and that (R. 831)

"., . bias or prejudice on the part of one or more of the grand jurors is not a ground for quashing the indictment."

Until the case against petitioner, there could have been no doubt that the statutes and decisions of the State of Washington required that grand jurors be fair and impartial Section 10.28.030 of the Revised Code of Washington provides that at the time of impanelment a grand juror may be challenged:

"... when, in the opinion of the court, a state of mind exists in the juror, such as would render him unable to act impartially and without prejudice."

The petitioner herein, not having been held to answer at the time of impanelment, was unable to exercise his right under the aforesaid statute (R. 833).

The interpretation placed upon R.C.W.-10.28.030 by the four judges of the Washington Supreme Court whose opinion will have been controlling if his conviction is allowed to stand, results in the inscapable conclusion that accused persons held in custody or "held to answer" for an offense at the time of impanelment of the grand jury have a proection not afforded those simply called before the grand jury and then accused by indictment (R. 33). An accused person "held to answer" for an offense at the time of impanelment has the right o challenge a grand juror, but one who is merely under investigation (although the known "target" of the grand jury) does not. The former class of persons has the state guarantee of an impartial grand jury: the latter does not.

This in itself raises a question of equal protection. Is such classification (the distinction between hose "held to answer" and those not in custody but known to be the subject of the grand jury inrestigation) sufficiently definite and reasonable o comply with the Fourteenth Amendment's reuirement of equal protection of the laws? Is such construction of the Washington statute by the ourts and prosecutors of the State of Washington

a violation of the Fourteenth Amendment to the United States Constitution?

Early Indiana statutes required that challenges to grand jurors must be made prior to the time the jurors were sworn. The court held, however,

"... where a person is under prosecution for a indictable offence, whether in custody or or bail, it would perhaps devolve no hardship upor him to require that he should take his objection to the grand jury about to inquire into the offence with which he is charged, or any member thereof, by way of challenge, and not permit him to forego the challenge and afterward set up the objection by plea in abatement. But where a person is not under prosecution for a offence, he cannot be supposed to anticipate that a charge may be made against him before the grand jury, and in such a case we think he may plead in abatement of the indictment the disqualification of any grand jurors who found it." Hardin v. State, 22 Ind. 351 (1864).

Where an accused sought to challenge grand juors after they were sworn upon the ground that he could not have a "fair and impartial investigation" of his case, a federal court said:

"...he was not arrested and imprisoned on any criminal charge, and now brought hither by order of the court, nor is he under bail or recognizance; but because he is not in any of those constrained positions is he any the less entitled to a grand jury of his county, legally qualified under its laws? Surely not." United States v. Blodgett. 30 Fed. Cas. 1157, No. 18312, (1867).

See also McQuillen v. State, 8 Smedes & M., 58 (Miss 1847)

"A prisoner who is in court and against whom an indictment is about to be preferred may undoubtedly challenge for cause, this is not questioned. But the grand jury may find an indictment against a person who is not in court, how is he to avail himself of a defective organization of the grand jury? If he cannot do it by plea, he cannot do it in any way, and the law works unequally by allowing one class of persons to object to the competency of the grand jury, whilst another class has no such privilege. This cannot be. The law furnishes the same security for all, and the same principle which gives to a prisoner in court the right to challenge, gives to one who is not in court the right to accomplish the same end by plea, and the current of authorities sustains such plea."

The United States Supreme Court reviewed the course of the decisions in 1904 and found that those few decisions denying the right to challenge after indictment were not supportable in principle.

"Some of the cases have gone so far as to hold that an objection to the personal qualifications of grand jurors is not available for the accused unless made before the indictment is returned in court. Such a rule would, in many cases, operate to deny altogether the right of an accused to question the qualifications of those who found the indictment against him, for he may not know, indeed, is not entitled of right, to know, that his acts are the subject of examination by the grand jury." Crowley v. United States, 194 U. S. 465 (1904).

It is therefore clear that at common law an accused had the right to challenge a grand jury or its members for bias or prejudice at the time of impanelment, if he was then held to answer for an offense; but one who had been denied the opportunity to interpose such challenge had the right to make an appropriate motion to quash, motion to dismiss, or plea in abatement after an indictment had been

returned against him by a grand jury made up it part of members who were biased or prejudiced

This common law principle appears to have been carried over into the statute laws of the State of Washington. Section 1 of the Code of 1881 of the Territory of Washington, the origin in virtually in present form of the present Washington statute (R.C.W. 4.04.010)," provided that the common law should apply in the State of Wishington to the extent that it was "not inconsistent" with the Code

The only statute of the State of Washington which respondent may conceivably contend is inconsistent with petitioner's common law right to challenge any or all of the members of the grant jury that returned the indictment herein on the grounds of bias and prejudice, is R.C.W. 10.28.010. The four judges of the State Supreme Court who

The four judges of the State Supreme Court who voted for affirmance of petitioner's conviction interpreted that statute as limiting the right to challenge individual members of the grand jury panel of the ground of disqualification by reason of inability

^{**} See also: Alabama v. Middleton, 5 Port. 484 (Als. 1887): State v. Rughes, 1 Als. 665 (1860); People v. Romero, 18 Cal. 90 (1961), Siste v. Smith, (Okto. 1968), 320 P. 24 78

[&]quot;RIC.W. 4.04.010 Retent to which common low prevail. The common law, so far as it is not inconsistent with the Constitution and laws of the United States, or the State of Washington nor incompatible with the institutions at conditions of society of this state, shall be the rule of decision in all the courts of this state." [1801 C. 17 § 1; Cob 1821 § 1; 1867 P. 8 § 1; 1868 p. 88 § 1; RRS § 143.]

[&]quot;Challenge to Penal. Challenge to the panel of grand jurns shall be allowed to any person in custody or held to se over for an offense, when the clerk has not drawn from the jury how the requisite number of ballots to constitute a grand jury, or when the drawing was not done in the propers of the proper officers; and such challenges shall be in writing and verified by affidavit and proved to the satisfaction of the court."

to act impartially and without prejudice under R.C.W. 10.28.030 to such persons who, at the time of impanelment of the grand jury, were "in custody or held to answer for an offense."

However, much interpretation of the statute igpores the following official annotation thereof appearing in the first annotated code of the laws of the State of Washington, prepared by an eminent practitioner who was familiar with the common law and practice under the first nine years of the Code of 1681:

"A challenge to the panel must be interposed before the grand jury is made up and sworn, provided the defendant has, prior to that time, been held to answer; ... An indictment found against a person who is refused the privilege of challenging the grand jury is invalid and worthless; ... A defendant who has not been held to answer before the grand jury is made up and sworn may challenge the panel on his arraignment." (2 Hills Annotated Statutes and Codes of Washington, § 1205, 1891).

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The four judges of the State Supreme Court who favored affirmance of petitioner's conviction considered that R.C.W. 10.28.130 " fortified their conclusion that petitioner had no right to a fair and impartial Grand Jury, since it is incumbent upon grand jurors to testify of their own knowledge; and respondent has adopted this argument in its brief is opposition to the petition for certiorari herein (Resp. Br. p. 13). Apparently respondent is urging that because a grand juror has knowledge of a

[&]quot;Jurore to communicate personal imossisdes of offences. If a member of a Grand Jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he must declare the same to his fellow jurors who may thereupon investigate the same if a majority so order."

crime and reports it to his fellow jurors, the Grand Jury can thereupon act as a biased and prejudiced institution. Such argument appears to be a non sequitur; but any doubt about it is resolved by the very next section of the Revised Code of Washington (R.C.W. 10.28.140)" which provides that a complainant who institutes a prosecution may not be present at the deliberations of a Grand Jury and may not vote for the finding of an indictment. The respondent's (and the State Supreme Court's) oversight of this last cited Washington statute is highly significant, for it is apparent that the statute is intended as a protection against having a biased member on the Grand Jury. There is no conceivable reason why a grand juror could not testify and then rejoin the deliberations, unless the drafters of the statute intended to safeguard the Grand Jury from the presence of a biased member."

Prior to petitioner's case, the decisional law of the State of Washington appeared to be well settled in favor of the right of an accused person to an un-

[&]quot;Complainant not to take part. No complainant who may institute a prosecution shall be competent to be present at the deliberations of a Grand Jury, or vote, for the finding of an indictment."

In this connection it is also interesting to note that it is a crime for a grand juror who has been disqualified for prejudice to take part in the proceedings of the grand jury relative to the person who interposed the challenge. "R.C.W. 9.51.040. Grand juror acting after challenge allowed. Every grand juror who, with knowledge that a challenge interposed against him by a defendant has been allowed, shall be present at, or take part, or attempt to take part, in the consideration of the charge against the defendant who interposed such challenge, or the deliberations of the grand jury thereon, shall be guilty of a misdemeanor." (Notice that the statute refers to a "defendant". There is no defendant until an indictment has been returned.)

biased and unprejudiced Grand Jury. In State ex rel Murphy v. Superior Court, 82 Wash. 284, 144 Pac. 32, the Supreme Court of the State of Washington held that it was proper for a judge to excuse certain prospective grand jurors, and in so doing, declared:

"That it was the policy of the legislature to preserve the right to have an unbiased and unprejudiced grand jury, and that no suspicion should attach to the manner of its selection in all cases, cannot be questioned."

In the later decision of State v. Guthrie, 185 Wash. 464, 56 P. (2d) 160, the Supreme Court of the State of Washington held that a motion to quash an indictment was properly denied, but in so doing, the court cited the Murphy case, supra, with approval and discussed § 10.28.030 of the Revised Code of Washington as follows:

"While this section may be said to relate to challenges made by interested persons, it is not to be construed as denying to the court the right, upon its own motion, to excuse a juror deemed to be disqualified or incompetent. To deny this right would be out of harmony with the policy of the law, which charges the court with the responsibility of insuring that qualified and impartial grand jurors are secured." (emphasis added)

In states which have statutory provisions similar to the applicable statutes of the State of Washington, it is held that the institution of the Grand Jury must be one which acts fairly and impartially. Illustrative cases are:

State v. Johnson, (N. D. 1927), 214 N. W. 39; Maley v. District Court, (Iowa 1936), 266 N. W. 815; Burns International Detective Agency v. Doyle, (Nev. 1922), 208 Pac. 427.

- 2. The State trial court erroneously impaneled and instructed the Grand Jury.
- (a) Public hostility toward petitioner prior to and during Grand Jury proceedings.

The Grand Jury which returned the indictment herein was convened on May 20, 1957 (R. 312). Prior thereto, on or about February 26, 1957, a United States Senate committee (commonly known as "The McClellan Committee") had commenced an investigation into the affairs and conduct of certain labor unions and labor union officials (R. 646-659). These hearings, of course, were not supervised by any court, and the statements made before the Committee were not subject to rules of evidence or to the right of cross-examination (R. 646)."

It is doubtless fair to assert that the publicity concerning the statements and charges made in the course of these hearings exceeded that of any hearings conducted by any legislative body, including the earlier "McCarthy Committee" hearings.

Most of the hearings of the committee were conducted in public and were extensively reported by all forms of news media (R. 646). Proceedings of the Committee were also televised and broadcast "live"; and the more sensational comments and

The hearings are contained in several volumes entitled HEARINGS BEFORE THE SELECT COMMITTEE ON IMPROPER ACTIVITIES IN THE LABOR OR MANAGEMENT FIELD, printed by the United States Government Printing Office. The printed reports of the proceedings of the Committee will be referred to herein as "Hearings", and the volume and page numbers will be designated.

testimony concerning petitioner were reported on the daily (and sometimes hourly) radio and television newscasts.

During the hearings, petitioner was repeatedly charged by members of the Committee with crimes and other misconduct. The Seattle area (which comprises King County) was a focal point for the dissemination of publicity concerning these charges and other publicity of a highly derogatory and accusatory nature in view of the fact that petitioner, who was a principal subject of charges made in the course of the hearings, had for many years been a resident and labor leader in this area. The so-called disclosures and "findings" which were made during these hearings were featured in both of the newspapers published in Seattle; and sensational characterizations of the testimony and comments of members of the Committee were flamboyantly displayed in large type, frequently in banner headlines (R. 501 et seq.). The two Seattle newspapers together have a circulation of approximately 313,000; and in addition to the normal circulation, copies of these newspapers are regularly displayed throughout Seattle in a prominent manner so that the general public may observe and read the large type headlines. During the hearings, it was observed that many persons paused to read the accusatory headlines concerning petitioner and were heard to make remarks indicating that they accepted such accusations and reports as being true (R. 501 et seq.).

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Sensational reports of the Committee hearings were contained in magazines having national circulation, including TIME, LIFE, LOOK, NEWSWEEK and U. S. NEWS AND WORLD REPORT (R. 502).

In addition thereto, there was published, within a week prior to the return of the indictment, an article in the July 6, 1957 issue of THE SATURDAY EVENING POST, entitled "The Unknown Sleuth Who Trapped Dave Beek" (R. 585). This article likewise contained accusatory and derogatory statements concerning petitioner (R. 586-588).

On March 26th and 27th, 1957, and on May 8, 1957, petitioner appeared as a witness before the Committee. On both occasions he promptly informed the Committee that, upon advice of his counsel, he would assert the privilege against self-incrimination with respect to the matters which were the subject of the investigation. Nevertheless, the Committee repeatedly posed questions to petitioner which petitioner refused to answer, asserting in each instance his privilege against self-incrimination. The Committee permitted this interrogation to be televised and broadcast by television and radio networks throughout the United States; and these broadcasts and telecasts were heard and observed by large portions of the population in King County (R. 649-650). A Seattle television station advertised and announced that it would carry a "live" report of the proceedings on the second day of petitioner's appearance, and the announcement indicated that the station would devote approximately 9 and 3/4 hours of its telecasts for that day to reproductions of the hearings and to news comments relating thereto (R. 516).

During petitioner's appearances before the Committee, petitioner was severely criticized by members of the committee for invoking the Fifth Amendment and his right to do so was challenged (R. 652-653). Some members of the Committee ac-

tually asserted during the public hearings that the claim of privilege under the Fifth Amendment constituted an admission of guilt (Vol. 5, Hearings, p. 1537, 1548).²⁹

The purpose of the Senate Committee with respect to petitioner was demonstrated at the time of petitioner's appearance on March 27, 1957. The Chairman then stated (Hearings, Vol. V, p. 1678):

"We have a witness here that is refusing to answer, and who is hiding behind the Fifth Amendment. The only reason I have continued is to let the country know, let the Teamsters of this country know, the character of transactions that have transpired, about which this witness is unwilling to make disclosures under oath. For that reason, I have indulged the interrogation to this point."

Announcement of the proposed impanelment of a Grand Jury to investigate petitioner was made on April 26, 1957. On May 3, 1957, it was reported that the Prosecuting Attorney had designated a former Mayor of Seattle and a vice-president of the Seattle Bar Association to act as special Prosecutors in the conduct of the Grand Jury proceedings (R. 535-536). This article contained the following statement:

"The Grand Jury is to investigate possible misuse of Teamsters Union funds by international president Dave Beck..."

The Grand Jury was impanelled on May 20, 1957. Between sessions, all of the aforesaid news media were available to the grand jurors. During the month of April, and continuing until the return of

Neither the Committee Counsel nor the Committee Chairman corrected these inaccurate assertions. Compare the decision of this Court in *Grunewald v. U. S.* 353 U. S. 391, 421.

the indictment on July 12, 1957, reports were circulated by news media with the degree of intensity described above, charging that petitioner:

had illegally obtained profits from a widow's trust fund;

was possibly connected with mail fraud;

had misused his Union position in 52 instances (including instances of misappropriation of funds);

had invoked the Fifth Amendment 60 times;

had stolen \$300,000.00 from the Union, and "took" \$300,000.00 from the Union;

had been guilty of "rascality";

had committed "many criminal actions";

had used Union funds for the payment of personal bills;

had been indicted by a Federal grand jury for tax evasion.

Most of these reports attributed the charges to the Chairman of the aforesaid Senate Committee (R. 507-642; 680-711; 732-794; 798-810).

The above references are but illustrative of the many prejudicial reports concerning petitioner. It would be impractical to include all such reports in the record to this court. Additional illustrations are contained in the Appendix to the Petition herein and in the Record at 508-642, 682-711, 734-810.

The opinion of Robert F. Kennedy, Chief Counsel for the Committee, concerning the probable effect of the hearings upon the reputation of petitioner is demonstrated in Mr. Kennedy's book "THE ENEMY WITHIN." At page 29 Mr. Kennedy states

^{30.} Harper & Brothers, Copyright 1960, Robert F. Kennedy.

that when petitioner appeared before the Committee:

was a major public figure about to be utterly and completely destroyed before our eyes. I knew the evidence we had uncovered would be overwhelming. It would make him an object of disgust and ridicule. I knew from what we had and from my conference with him in New York that he would have no choice but to plead the Fifth Amendment against self-incrimination. It was no contest now. He couldn't or wouldn't fight back."

And at page 35, Mr. Kennedy states that at the time of petitioner's appearance before the Committee on May 16, 1957:

"He was a different man from the Dave Beck I had seen at the Waldorf on January 5, or before the Committee on March 26. Now he was dead, although still standing. All that was needed was someone to push him over and make him lie down as dead men should."

The effect of the publicity relating to petitioner is shown by the nature of the news reports. On March 29, 1957 the Seattle Post-Intelligencer reported that Beck was hanged and burned in effigy in Yakima, Washington (R. 522), and the April 8, 1957 issue of TIME Magazine reproduced a picture of this incident (R. 525). On April 12, 1957 U. S. NEWS & WORLD REPORT reported that petitioner's standing in Seattle had been "badly hurt" in an article entitled "How Dave Beck Rates New in His Home Town" (R. 531). On May 27, 1957 TIME Magazine published an article under the caption "A CITY ASHAMED—Dave Beck is on Seattle's Conscience" (R. 573). Both Seattle newspapers on May 18, 1957 prominently reported a derogatory

criticism of petitioner by the Episcopal Bishop of the Diocese of Olympia (R. 560-561).

Four of the judges of the Supreme Court of the State of Washington stated that (R. 867):

"The amount, intensity, and derogatory nature of the publicity received by [petitioner] during this period is without precedent in the State of Washington.

"The natural effect of this publicity was that in the eyes of the average citizen, the character of appellant had been thoroughly discredited in the Seattle area on or before May 20, 1957.

"In view of the circumstances shown by the undisputed facts stated in the affidavits in this case, I think it would be unrealistic to believe that a very substantial number of the citizens of the community had not adopted, consciously or unconsciously, an attitude of bias and prejudice toward appellant at the time the grand jury was convened. If ever there was a case which required the most stringent observance of every safeguard known to the law to protect a citizen against bias and prejudice, this was it."

It was against this background that the grand jury was convened.

(b) The trial court, in the impanelment of the Grand Jury, made no effort to determine whether or not any prospective member was prejudiced against petitioner; and in fact accentuated and intensified the hostility and prejudice already existing against petitioner in the minds of the grand jurors.

In selecting the grand jurors, no prospective member was asked whether he had read anything about the alleged misconduct of petitioner as reported in connection with the hearings of the Senate committee or as elsewhere reported. No juror was asked if he had heard on the radio or seen on television any part of the Senate committee hearings. There was no interrogation of the jurors to ascertain whether any of them had heard or participated in any discussions concerning such matters. Although the court directed the attention of the grand jury specifically to petitioner as "the President of the Teamsters Union" (R. 329, 330), no juror was asked whether or not he had any preconceived notions as to the guilt or innocence of petitioner of the charges publicly made against him in the Senate hearings and adverted to by the court (R. 329).

In one of the opinions of the Supreme Court of the State of Washington, it was stated (R.870):

"In view of the unprecedented publicity which had been given to the Senate Committee hearings within the three months preceding the impanelment of the grand jury, I think that the jurors should have been interrogated for the existence of possible bias and prejudice against the officers of the teamsters' union."

After the grand jury was selected and the impanelment completed, the court explained and commented on the fact that the institution had been used so infrequently in the State of Washington that most people, even lawyers, were unfamiliar with its procedure and purposes (R. 327). The court then addressed the grand jury as follows (R. 329-330):

"We come now to the purpose of this grand jury and the reasons which the judges of this court thought sufficient to justify the expense to the county, and the inconvenience to and sacrifice by you, which this grand jury session will require.

"It seems unnecessary to review the recent testimony before a Senate Investigating Committee except to say that disclosures have been made indicating that officers of the Teamsters union have, through trick and device, embezzled or stolen hundreds of thousands of dollars of the funds of that union-money which had come to the union from the dues of its members. It has been alleged that many of these transactions, through which the money was siphoned out of the union treasury, occurred in King County. Such crimes, if committed, cannot be punished under Federal law, or under any law other than that of the State of Washington, and prosecution must take place in King County. The necessary criminal charges can only be brought in this county upon indictment by the grand jury or information filed by the prosecuting attorney.

"The president of the Teamsters Union has publicly declared that the money he received from the union was a loan which he has repaid. This presents a question of fact, the truth of which is for you to ascertain."

"To completely investigate all of these items may be beyond the energy and endurance of yourselves, the prosecutors and investigating staff. The financial burden of such a complete investigation may be beyond the resources of King County. I urge you to do all that you can within practical limitations to ascertain the truth or falsity of these charges."

The court failed to instruct the grand jury to disregard the then current hostile publicity directed toward petitioner, nor was the grand jury admonished to consider the evidence presented to

it in a fair and impartial manner and without bias or prejudice toward petitioner. But on the very afternoon of the day that the grand jury was selected and sworn, the following articles appeared in THE SEATTLE TIMES (R. 563-565):

"BECK OUSTED FROM A.F.L.-C.I.O. POSTS-

TEAMSTER CHIEF FOUND GUILTY OF 'VIOLATING TRUST.'"

"SOLON DENIES INFRINGING BECK'S RIGHTS"

"May I say that the committee has not convicted Mr. Beck of any crime, although it is my belief that he has committed many criminal offenses."

And on the following morning the SEATTLE POST-INTELLIGENCER displayed the following banner headline (R. 568):

"McCLELLAN LAYS 'MANY CRIMINAL ACTS TO BECK."

(c) Petitioner, as an officer of the Teamsters Union, was a member of a class requiring, and entitled to, the equal protection of the laws of the State of Washington.

Under the peculiar circumstances of the present case, petitioner was entitled to a fair and impartial grand jury by virtue of the equal protection clause as well as the due process clause of the Fourteenth Amendment. In *Hernandez v. Texas*, 347 U. S. 475, involving an indictment of a person of Mexican descent, this court stated (347 U. S. 478):

"... community prejudices are not static and from time to time other differences from the community norm may define other groups which need the same protection. Whether such a group exists within a community is a question of fact."

In this case the record conclusively establishes

that officers of the Teamsters Union (and possibly other unions) at the time and place and under the circumstances in which the Beck Grand Jury convened, constituted a class which urgently required the protection of the equal protection clause of the Fourteenth Amendment. Indeed, the court which impaneled the Grand Jury referred collectively to the "officers of the Teamsters Union" in his charge (R. 329), and made specific references to the "disclosures" of the McClellan Committee indicating that:

Officers of the Teamsters Union have, through trick and device, embezzled or stolen hundreds of thousands of dollars of the funds of that Union—money which had come to the Union from the dues of its members ... * (R. 329)

Surely, the trial court's unvarying repetition of the questions: (1) "Have you ever been a member of the Teamsters Union, or the Retail Clerks, or my affiliated union?" (2) "Are you acquainted with any officer of the Teamsters Union?" (3) "Are you now or have you ever been an officer in any union?" put to each and every prospective grand juror who was examined, could only have been for the purpose of intentionally and systematically excluding from the grand jury panel which returned the indictment is petitioner's case, every officer of the Teamster Union, or any other union. (See R. 312-326). At the very least, it constituted a method of grand jury selection which shows prima facie, intentional discrimination against members of such class (union officials, and especially officers of the Teamster Union) requiring respondent to meet the burder of proving an absence of such discrimination. (C. Avery v. Georgia, 345 U.S. 475.)

The court also advised the jury that petitioner had "publicly declared that the money received from the Union was a loan which he has repaid. This presents a question of fact, the truth of which is for vou to ascertain." (R. 329-330)

The latter was inaccurate and presented to the Grand Jury a wholly improper issue of fact. Petitioner never contended publicly, nor in his Grand Jury testimony, nor at the trial, that the \$1900 which he was charged to have stolen was a loan.

Such instructions and comments to the Grand Jury, in addition to singling out and defining a certain group of individuals within the community for the specific obloquy, hatred and contempt of the public at large and particularly of the Grand Jury, specifically violated the mandate of Article IV, Section 16 of the Washington State Constitution which provides:

"Judges shall not charge juries with respect to matters of fact, nor comment thereon, but shall declare the law."

Similarly, the above instructions, together with the court's reference to the expense to be incurred by the county in conducting the Grand Jury proceedings and to the sacrifice by the grand jurors was in violent disregard of the declarations of the Supreme Court of the State of Washington in State v. Guthrie, 185 Wash. 464, 56 P. (2d) 160, to the effect that the policy of the law:

... charges the court with the responsibility of insuring that qualified and impartial grand

jurors are secured."

Under these circumstances, and in light of the " hostility engendered against petitioner and other members of the class of "officers of the Teamsters Union" by the publicity previously referred to (in

part created by an agency of the United States Gov. ernment), it is submitted that petitioner was a member of a minority group or class requiring the protection of the equal protection clause of the Fourteenth Amendment.

(d) The trial court specifically denounced petitioner in its charge to the Grand Jury.

Until petitioner's case, it had been the uniform rule that an indictment returned by a Grand Jury would be set aside if the defendant named in the indictment had been denounced by the court which impaneled or charged the Grand Jury, or if such court specifically directed the attention of the Grand Jury to the defendant. The following authorities are illustrative:

Fuller v. State, (Miss. 1905) 37 So. 749, 750; Blake v. State, (Okla. 1932) 14 P. (2d) 240; Clair v. State, (Neb. 1894) 159 N. W. 118; State v. Will, (Iowa 1896) 65 N. W. 1010.

In this case, the trial court, in charging the Grand Jury, specifically directed its attention to "the President of the Teamsters Union" in connection with the "disclosures" of the McClellan Committee (R. 329-330); and, during the impanelment of the grand jury, inquired of one of the prospective members, within the presence and hearing of the entire panel:

"You are not acquainted with . . . Mr. Beck?" (R, 324)

It will be difficult, if not impossible, for respondent to show any realistic distinction between that question, and the question employed by the trial court in Fuller v. State, supra, ("Have you ever

heard of Charlie Fuller?") which was held to require quashing of the indictment.

3. The state prosecuting attorneys engaged in prejudicial misconduct before the grand jury.

In petitioner's case, grand jury witnesses who testified to facts favorable to petitioner were threatened with perjury; and the prosecutors, in the presence of the grand jurors, expressed disbelief in their testimony. This constituted grave misconduct. It was for the jurors, not the prosecutors, to determine the creditibility of the witnesses. It is improper for a prosecuting attorney, in the course of grand jury proceedings, to threaten witnesses or to argue issues of evidence. On the contrary, the secrecy which surrounds grand jury proceedings demands that a prosecutor act with the utmost fairness. The prosecutor's duty is simply to present to the grand jury facts sufficient to convince them that there is probable cause for a trial upon the merits. There is no cross-examination of witnesses. The accused has no right to appear. Hearsay evidence is admissible against the accused. Thus, the prosecutor's burden is slight. If in secrecy the prosecutor may threaten witnesses with prosecution and testify as to his own knowledge (when he would be rebuked for such conduct in open court), then grand juries are the vehicle of state oppression rather than protection for the citizen. Whatever excuse there may be for misconduct in a courtroom, there is none in the secrecy of the grand jury room. No person can be safeguarded against the possibility of unfounded accusations where, as here, the prosecuting attorney argues to the grand jury that witnesses who testify to facts favorable to the prospective defendant are committing perjury. Such conduct most seriously violates the fundamental standards of fairness which have been defined by this Court. This is particularly true of the statement by the prosecutors that "no person in this room" believed the testimony of the witness. The fact is that many of the jurors, in the absence of such comment, might have believed the testimony of the witness, but were persuaded not to do so by the fact that the prosecuting attorneys did not choose to believe this testimony. The prosecuting attorneys, however, were not the persons whose function it was to determine the truth or falsity of the testimony. That function belonged exclusively to the grand jury.

One of the most thorough analyses of the duties of a prosecutor in the conduct of the grand jury proceedings is contained in the case of U. S. v. Wells, (D. C. Idaho, 1908) 163 Fed. 313. In that case the court dismissed an indictment because:

"... a commendable zeal which gathered force as it progressed, finally expanded into an exaggerated partisanship wholly inconsistent with the semi-judicial duties of a public prosecutor, and entirely unnecessary to the execution of the power imposed." (p. 329)

In defining the power of the prosecutor before the grand jury, the court declared (p. 327):

"... the provision that the prosecuting attorney may at all times appear before the grand jury for the purpose of giving information or advice relative to a matter cognizable by them, was meant to confine him to those traditional duties of giving advice concerning procedure and the like, to the examination of witnesses, as expressly provided and not to the expression of opinions or the making of arguments.

To the same effect are the following authorities:

4 Wharton's Criminal Law and Procedure (1957) § 1716, p. 480;

Attorney General v. Pelletier, (Mass. 1922) 134 N. E. 407;

State v. Crowder, (N. C. 1927) 136 N. E. 337; People v. Bennin, (1946) 61 N. Y. S. (2d) 692.

In the State of Washington, commendable zeal does not permit a prosecutor to step beyond reasonable bounds of propriety in the open court room. Intemperate conduct there, even subject to adversary check and instructions of the trial judge, can and has resulted in reversals of convictions. State v. Case, 49 Wn (2d) 66, 298 P. (2d) 500. The due process clause of the Fourteenth Amendment requires no less.

In State v. Montgomery, 56 Wash. 443, 105 Pac. 1035 (1909), the Washington Supreme Court revesed a conviction for staturory rape. The court, after determining that there was sufficient evidence to sustain the verdict, nevertheless held:

"But whether the appellant was guilty or innocent he was entitled to a fair and impartial trial, according to the forms of law, and we are constrained to hold that this right was denied him."

The prosecuting witness, in her testimony, had denied any rape. The prosecutor then stated in open court that the witness had told him the contrary many times and that the witness must have been tampered with and bought. He then asked the witness leading questions. The witness was finally withdrawn from the stand, and taken to the prosecutor's office where the prosecutor told her that he would send her to jail for perjury. The Supreme Court held that the county prosecutor was a quasi-

judicial officer, and in that connection stated at 56 Wash. 447:

"While it is important that the appellant should be punished for his crime, if guilty, it is of far greater importance that settled principles designed for the protection of life and liberty should not be overthrown; and if persons accused of crime cannot be convicted without using against them testimony wrung from unwilling witnesses by threats of criminal prosecution and imprisonment, it is better by farthat they should go free than that such practices should receive the sanction and approval of the courts.

"It is not our purpose to condemn the zeal manifested by the prosecuting attorney in this case. We know that such officers meet with many surprises and disappointments in the discharge of their official duties. They have to deal with all that is selfish and malicious, knavish and criminal, coarse and brutal, in human life. But the safeguards which the wisdom of ages has thrown around persons accused of crime cannot be disregarded and such officers are reminded that a fearless, impartial discharge of public duty, accompanied by a spirit of fairness towards the accused, is the highest commendation that they can hope for. Their devotion to duty is not measured, like the prowess of the savage, by the number of their victims."

Surely the prosecutor is no less a state quasijudicial officer when he escapes the scrutiny and supervision of the trial court and enters the secrecy of the grand jury chamber. Mooney v. Holohan. 294 U. S. 103.

The conduct of the prosecuting attorneys in the grand jury room is in part set forth in Appendix A to the opinion of the four judges of the Supreme

Court of the State of Washington who were in favor of reversal of petitioner's conviction (R. 887 to 895). This court's attention is respectfully directed to that portion of the record for illustrative examples of the actions and statements by the prosecuting attorneys in this case which petitioner contends were grossly improper under any standard of ethical conduct. Measured by the conduct which this court condemned in Berger v. U. S., 295 U. S. 78, the conduct of the prosecutors in the grand jury proceedings herein constituted gross and prejudicial misconduct; and in this case such misconduct was the more prejudicial because, having been committed in secret, it was not subject to corrective instruction by any court.

The present record compels the conclusion that actual prejudice infected the grand jury proceedings, or, at the very least, that the situation was so charged with "potential prejudice" that reversal is required. Compare Hudson v. North Carolina, 363 U. S. 697. Further, this court has consistently held that the state's available alternative of accusing by information is no answer to a proceeding to set aside a defective indictment; if the state elects to proceed by grand jury, it must do so in a constitutional manner. See Eubanks v. Louisiana, 356 U. S. 584."

In connection with the question of whether the indictment in this case should be set aside it would seem that this Court may, in good conscience, consider the provisions of R.C.W. 10.01.020 which provides that in cases in which an indictment is set aside, computation of the period of limitations shall commence upon the date the indictment is set aside. Accordingly, the respondent has never contended that dismissal of the indictment in this case would bar further prosecution. We believe this type of statute to be most unusual. However, the judges of the court in which petitioner was convicted appear to be familiar with the

This raises the not so incidental question of why the State of Washington chose to proceed by indictment in this case (a procedure so unusual in the State of Washington that even lawyers and judges are admittedly somewhat confused by it (R. 327). rather than by information. During the course of the Senate investigation and Hearings previously referred to, members and representatives of the Me Clellan Committee conferred and cooperated with law enforcement agencies of the State of Washing ton, including the office of the prosecuting attorney for King County; and the prosecuting attorney for said county issued various statements concerning the Hearings which were reported in the public press (R. 647-649). Since the Senate Committee had broad inquisitorial powers, including the power to subpoena witnesses, books and records, it cannot be said that the State of Washington required the duplication of such inquisitorial powers by the grand jury in order to obtain the evidence necessary to commence a prosecution. Even if the investigative functions of the grand jury were helpful in that regard, respondent still had the option of proceed ing by information based upon evidence so obtained (R. 824). Can it be that a fair-minded and impartial

statute and the local practice thereunder of dismissing the indictment and proceeding by information (R. 824). The statute, insofar as pertinent, reads as follows:

[&]quot;R.C.W. 10.01.020 Limitation of Actions. Prosecution... may be commenced ... for all other offenses the punishment for which may be imprisonment in the partientiary, within three years after their commission. And further provided, that where an indictment is been found, or an information filed, within the implication of the commencement of a criminal action the indictment or information be set aside, the time limitation shall be computed from the setting aside such indictment or information."

public prosecutor could not in good conscience regard such evidence as sufficient to support a prosecution commenced by information, but was willing, like Pontius Pilate, to permit an inflamed and impassioned grand jury to relieve him of the responsibility imposed by public pressure?

4. The improper and unconstitutional grand jury proceedings permeated and affected the subsequent trial and appeal in the state courts.

The trial in this case commenced on December 2, 1957 amid the frenzied clamor of anti-Beck publicity of the nature and intensity previously described. Twelve days later, on December 14, 1957, the jury returned a verdict of guilty (R. 27).

The evidence offered by respondent and petitioner was commented upon by the Supreme Court of the State of Washington in its opinions (R. 828-896) and discussed in the Petition herein in some detail. A capsule summary appears in Appendix "A" hereto.

In brief, petitioner was convicted of unlawfully appropriating to his own use the sum of \$1,900, the proceeds from the sale of a Teamster owned automobile, received by his secretary and deposited to one of his personal bank accounts without his knowledge. The only evidence in any manner calculated to connect petitioner with the transaction or show his knowledge or intent to wrongfully appropriate such funds consisted of two items. One was exhibit 17, a rough work-sheet of an accountant in the Certified Public Accounting firm that prepared petitioner's federal income tax returns. This exhibit was produced during the course of the grand jury proceedings. All the testimony concern-

ing it showed that petitioner had not directed its preparation, nor ever seen it, nor even known of its existence. The other item of evidence was the testimony of ex-Mayor Devin, one of the special prosecutors for the Beck grand jury, to the effect that his recollection of petitioner's grand jury testimony was that petitioner had there testified that upon his return to Seattle from a business trip in Februs ary of 1956, petitioner had for the first time learned of the sale of the automobile and deposit of the proceeds to his account; that petitioner had thereupon given \$1,900 to Fred Verschueran, Jr., a Teamster bookkeeper, to be deposited to the account of either the Western Conference or the Joint Council, whichever should turn out to be the owner of the automobile (R. 857). Mr. Verschueren had also been summoned before the grand jury with the results previously indicated (R. 887-895).

In short, the grand jury proceedings in petitioner's case were converted into a pretrial discovery device for the prosecutor, with the record and results thereof jealously guarded and concealed from petitioner and his counsel, but exposed to the speculation of the trial jury through the testimony of Mayor Devin and an accountant's scratch pad (containing admittedly tentative and erroneous notations). The secrecy of the grand jury proceedings was used as a device to prevent or limit the effective cross-examination of Mayor Devin, but was conveniently ignored whenever it was to the advantage of the state's case to do so.

Under such circumstances the institution of the Grand Jury was employed by the State of Washington not as a bulwark of protection to stand between the prosecutor and the accused (cf. Hoffman v. United States, 341 U. S. 479 at 485), but as a weapon of offense to gain tactical advantage for the prosecutor at the trial.

It may thus be seen that the prejudicial effect on petitioner of the improper and unconstitutional proceedings of the grand jury did not end with the return of an indictment. The theory upon which the Supreme Court of the State of Washington approved the admissibility of Exhibits 17 and 18 would not even have been arguable but for the production of Exhibit 17 pursuant to the grand jury's subpoena. Further, the prosecutor effectively prevented the defendant from calling Fred Verscheuren, Jr. as a witness in his defense by the browbeating and intimidation of such witness before the grand jury. The prosecutor also seized upon the advantage obtained through the grand jury proceedings to discredit the witness Marcella Guiry, petitioner's secretary, at the trial, by intentionally calling the jury's attention to the fact that she had sought protection of the Fifth Amendment during her grand jury testimony, even though such questioning had been prohibited by a ruling of the trial court. The trial court denied petitioner's motion for a mistrial based on this conduct.

In final rebuttal argument before the trial jury the prosecutor made two statements which revealed his deliberate strategy (a) to make full use of the bias and prejudice built up by the massive campaign of publicity hostile to petitioner in order to secure a conviction, (b) to invite the jury to draw an inference of guilt from the failure of petitioner to testify concerning the receipt of the \$1900 or the

subsequent disposition thereof, and (c) to persuade the trial jury that, since the grand jury had heard testimony from petitioner and Fred Verschueren Jr. and had thereafter returned the indictment against petitioner, the grand jury must not have believed their testimony; and that therefore the trial jury should not believe it either. These excerpts from the argument of the prosecutor, Mr. Regal, are set forth at R. 310-311. Four judges of the Washington Supreme Court "held" that such argument was not erroneous because it amounted to no more than a fair reply to the argument of petioner's counsel (R. 858-860). The portion of the argument of petitioner's counsel to which the prosecutor's comments are said to "reply" are reproduced at R.307-310.

It is submitted that this prejudicial misconduct of the prosecuting attorney in itself constituted a denial of due process of law; when taken in the context of the almost unbelievable intensity of the denunciation of petitioner through public news media to which every one of the trial jurors who tried the case was exposed (R. 47-307), it is obvious that the purpose, and likely result, of such misconduct was to magnify and accentuate the errors which had occurred with respect to the grand jury proceedings

In accordance with the rules applicable in the State of Washington, the conviction of petitioner was appealed to the Supreme Court of the state. The case was first argued in March, 1959 and the first opinions of that court were filed in February of the following year (R. 828-896). Eight judges considered the appeal and were equally divided in their decision; the court nevertheless filed a per

curiam statement purporting to affirm the conviction. This purported affirmance was in direct violation of the Constitution and statutes of the State of Washington and the rules of the Supreme Court of the State of Washington, which provide that a concurrence of a majority of the judges shall be necessary to pronounce a decision. The applicable constitutional and statutory provisions, and the applicable court rules are set forth herein at pp. 3-5.

Upon petition for rehearing and reargument, the members of the Supreme Court remained equally divided in their respective opinions on the merits, but a majority of those sitting apparently voted to allow the conviction to stand despite the lack of a constitutional majority for affirmance or reversal (R. 904). Prior to one of the rearguments, one of the judges who heard the case (and who voted for affirmance) is reported to have stated in a press conference that the case had political implications because of the fact that three of the judges of the State Supreme Court were candidates for reelection in the November 1960 election (Seattle Post-Intelligencer, June 3, 1960, "Beck Case May Be Election Issue" (R. 903).

The impact upon petitioner of the purported affirmance of his conviction by the equal division of the Supreme Court of the State of Washington on the fundamental issue of petitioner's federal constitutional right to a fair and impartial grand jury can best be illustrated by the argument of respondent in opposition to the Petition for Certiorari herein. At p. 13 of respondent's brief in opposition to the Petition, respondent appears to contend that, because the State Supreme Court was unable to decide whether or not petitioner had a right, under

the laws of the State of Washington, to a fair and impartial grand jury, this court is prohibited from determining whether or not petitioner has such a right protected by the federal constitution. Thus, four judges of the Supreme Court of the State of Washington, acting contrary to the Constitution and laws of the state, are being permitted by respondent to imprison petitioner even though it is conceded that these four judges cannot and have not determined the Washington law on a critical issue in the case. This itself, we submit, is a violation by respondent of petitioner's right to due process and equal protection of the laws under the Fourteenth Amendment. The constitutional guarantees of the Fourteenth Amendment apply to all acts of the state, including the acts of its judiciary: See Carter v. Texas, 177 U. S. 442. Therefore, in those states, such as Washington, where a right of appeal exists in every criminal case, that right must be afforded to each and every defendant in a manner consistent with the methods of appeal which are provided and in accordance with the federal guarantees of equal protection and due process.

See Frank v. Magnum, 237 U. S. 309; Dowd v. United States, 304 U. S. 206; Kyle v. Wiley, 78 A. (2d) 769, (1951).

A constitutional and statutory system of appeal cannot be arbitrarily applied or ignored as the state courts see fit. It must rather be applied in conformity with the plain meaning of its provisions and equally to all appellants.

See: Griffin v. Illinois, 351 U.S. 12;

Bekridge v. Washington State Board, 35 U.S. 214:

Cole v. Arkansas, 333 U.S. 196.

Under these decisions, where an appellate procedure is established by a state for criminal prosecutions, the procedure must be followed in all cases.

But the State of Washington has "decided" in violation of the foregoing principle, to imprison petitioner without benefit of the appellate procedure prescribed by its constitution, statutes and court rules (which is available to every other person charged with a criminal offense in the State of Washington), because its Supreme Court is unable to decide, in accordance with such procedure, whether or not petitioner has a "federal constitutional right to a fair and impartial Grand Jury" Cassell v. Texas, 339 U. S. 282 at 283).

Thus the trial itself, as well as the state appellate proceedings in this case, were infected by the inalid proceedings of the unconstitutionally selected and conducted grand jury which indicted petitioner.

The Denial of Petitioner's Motions for Continuance and Change of Venue Deprived Him of Due Process of Law.

As indicated above, the Senate committee hearings directly resulted in a series of events which ept the committee's charges against petitioner irmly fixed in the public attention continuously rom the spring of 1957 until the time of trial in ecember, 1957. Following the indictment of petitioner on July 12, the committee resumed its public and highly publicized hearings in October, (when etitioner was originally scheduled to go to trial), ontinuing to attack and vilify both petitioner and ther officials of the Teamsters Union with whom is name was intimately connected in the public and. In August he was indicted by a federal grand

jury on several counts of tax fraud concerning the same transactions which had been the subject of the committee proceedings in March and May. In November his son stood trial in Seattle on two counts of grand larceny. The subject matter of that trial, like the present case, concerned the sake of union-owned automobiles. Petitioner's appearance as a witness in his son's behalf provoked further sensational publicity. The conviction of the younger Beck was heralded in the local newspapers with headlines such as "DAVE BECK, JR., GUILTY AS THIEF". The trial of petitioner himself followed a few days later.

It is beyond dispute that the Senate committees "exposure" of petitioner and insistence upon for ing him repeatedly to invoke the privilege against self-incrimination before a nation-wide television audience, followed by the indictment in the instan case, the indictment in the tax fraud case, the re sumption of the committee hearings, and the trial of petitioner's son, together comprised the foremos public event in Seattle and the State of Washing ton in the year 1957. The attendant publicity was at all times intensive and inflammatory, continuing to the very eve of petitioner's trial. The following excerpts from the exhibits submitted by the pet tioner in support of his motions for continuance and change of venue are merely illustrative of the hostile publicity which was circulated throughout King County from July 12, the date of the indicment, until December 2, the date the trial began:

Seattle Times, July 12, 1957 (Tr. 590)

JURY INDICTS BECK AND SON ON

GRAND-LARCENY COUNTS

Seattle Times, July 12, 1957 (Tr. 593) KENNEDY HAILS JURY FOR INDICTMENTS

Look Magazine, August 6, 1957 (Tr. 597): THE DIZZY DESCENT OF DAVE BECK

Seattle Post-Intelligencer, August 20, 1957 (Tr. 603)

PROBE TOLD BECK OKA 'PHONY' UNITS

Saturday Evening Post, Augsut 24, 1957 (Tr. 605)

CAN LABOR LIVE DOWN DAVE BECK?

Seattle Post-Intelligencer, September 22, 1957 (Tr. 615)

UNION CORRUPTION
HIT BY SENATOR

Seattle Times, Sepember 25, 1957 (Tr. 618)
BECK, BREWSTER 'HAD NO INTENT'
TO REPAY FUNDS—A.F.L.-C.I.O. Charges

October 1, 1957 (Tr. 641)

BECK CALLED SYMBOL

OF CORRUPTION

Beattle Times, (Tr. 642)
HOFFA-BECK DEAL
HINTED BY 2 RIVALS

Seattle Times, October 10, 1957 (Tr. 682)
HOFFA'S ELECTION VIOLATED
UNION RULES — McClellan

Life Magazine, October 14, 1957 (Tr. 687)

MUSCLES RULE THE TEAMSTERS

Defeated Boss Beck Glumly Serves

Last Time as Head of Convention

Seattle Post Intelligencer, October 23, 1957 (Tr. 692)

JURY TOLD BECK CARRIED MONEY BAG

Seattle Post-Intelligencer, October 25, 1957 (Tr. 693)

TEAMSTERS ASK 1 YEAR TO CLEAN HOUSE

Seattle Post-Inteligencer, October 30, 1957 (Tr. 700)

PROBE TOLD SEARS PAID BECK'S WAY TO FUNERAL OF TOBIN

Seattle Times, November 1, 1957 (Tr. 703) CORRUPTION ASTONISHING, SAYS MEANY

Seattle Post-Intelligencer, November 1, 1957 (Tr. 707)

FORMER IKE AID TELLS OF WORKING FOR BECK

President Eisenhower's 1952 labor advisor disclosed today he served as a \$5,000-a-year aide to Teamster boss Dave Beck from 1955 "until I got my belly full" in 1955.

Seattle Times, November 12, 1957 (Tr. 745)

DAVE BECK, JR.,

LARCENY TRIAL OPENING

Seattle Times, November 22, 1957 (Tr. 778)

'MY BOY HAS DONE NO WRONG!'

DAVE BECK, SR., TELLS JURY

Beattle Times, November 24, 1957 (Tr. 791)
DAVE BECK, JR., CONVICTED

Seattle Post-Intelligencer, November 27, 1957 (Tr. 805)

BECK EFFORT TO POSTPONE TRIAL REBUFFED

Asserting that the McClellan committee's denunciations of him and the resultant flood of inflammatory publicity had created a public atmosphere of hostility and prejudice which would make a fair trial impossible, petitioner moved in the alternative for a change of venue or for a continuance of six months (R. 4, 5). The trial court denied these motions on the grounds that the jurors of King County were generally of high calibre, and that there was no guarantee that petitioner could obtain a fairer trial after the passage of a reasonable time (R. 840, 841). Petitioner's challenge to the panel of prospective jurors, based upon the same grounds, was also denied (Tr. 40).

At the commencement of trial, four prospective jurors were summarily excused for the reason that they had served at the trial of petitioner's son, which had ended a few days earlier (Tr. 47). Following this the trial judge addressed the jury panel as follows:

"To put the same thing in another way, and I am not now asking you a question to answer yet but I want you to keep this factor in mind, the problem of this question of reading, hearing, and seeing as a member of the public might be put this way. Do you now have an opinion or an impression as to the guilt or innocence of the accused which would require evidence to remove from your mind? . . . Now intelligent persons know that impressions they have received from what they have read in the newspapers or heard on the radio or seen, read and

heard on the TV, are not always true. No intelligent person would rest a decision on such an impression without a more formal and more convincing type of proof. Now with those factors in mind with reference to this subject, I wish to ask you this question. I wish you to search your hearts and minds for the answer.

Now if any of you from what you have read do feel that you have in your mind an opinion as to the guilt or innocence of the defendant or such an opinion as would require evidence to remove by either side, please hold up your hands." (Tr. 52-53) (Emphasis added)

Despite this invitation to the prospective jurors to appear "intelligent" by denying any preconceived opinion33, 19 panelists admitted prejudice and were excused. These nineteen comprised more than thirtysix percent of the total of 52 veniremen who were subjected to any degree of voir dire examination. of the remaining thirty-three, nine were excused for personal reasons, one was excused because her husband was a prospective witness, six (the maximum permitted by law) were challenged peremptorily by the defense, five were challenged peremptorily by the State, and twelve, plus an alternate were sworn to try the case. All of the veniremen, with one exception, knew of the case in advance of trial (R. 52). The exception, prospective juror Ryan, was the subject of the prosecution's first peremptory challenge (R. 165).

The voir dire examination showed that all twelve jurors who were finally permitted to serve had

When petitioner objected to the trial court's admonition on the ground that it would influence the veniremen's responses Tr. 57,) the court responded in part as follows "Concerning the newspapers, I think a person knows that everything in a newspaper is not true." (Tr. 58)

heard of the case; that eleven definitely and possibly all twelve, had heard, seen or read the adverse publicity concerning petitioner; that seven definitely, and possibly ten, had discussed, or been present at discussions of, the charges against petitioner. The following table sets forth the appropriate transcript references for each of the twelve jurors:

Jurors	Heard of Case	Read or seen adverse publicity	Discussed or been present at discussion of charges against petitioner
No. 1 Inez Degering	73	78	78
No. 2 Eleanor Eaken	121	uncertain	uncertain
No. 3 Robert Moe	256	261	uncertain
No. 4 Peter C. Peterson	246	- 250	uncertain
No. 5 Frank Walton	283	288	283
No. 6 John Vukich	.60	60	60
No. 7 Anna Harold	289	295	290
No. 8 Mrs. Cecile Wilson	208	211	no
No. 9 Elsie Fields	64	151	no
No. 10 R. H. Westenberg	50	156	51
No. 11 Charles Hickling	265	272	272
No. 12 Paul Lange	50	165	51

Of the nineteen panelists who were excused for admitted prejudice, all but six were excused before being questioned specifically on the effects of the Senate committee hearings and their aftermath. In each of the six instances where the subject was reached, the venireman's response showed affirmatively that the disqualifying prejudice stemmed from that source. This aspect of the voir dire examination may be summarized as follows:

Prospective juror Cox had observed only "part of one appearance" of petitioner before the senate committee, yet attributed his prejudice at leasting part to that experience (Tr. 72).

Prospective juror Helen Brown saw only "five or ten minutes" of the televised committee hearings as a result of which evidence from the defense would have been required to change her state of mind (Tr. 106, 108).

Prospective juror Harold Brown based his adverse opinion, which would require evidence to counteract, solely on the comments of friends and associates who had read or seen some of the publicity concerning petitioner (Tr. 169).

Prospective juror Hubbell referred to the pretrial publicity as including "a lot of evidence" to suggest misappropriation of union funds (Tr. 195).

Prospective juror Hebert, answering a question of the trial judge, stated that her preconceived opinion did not arise from what she had heard so far in the court room, but "from what I have read and heard and spoken of and heard on radio" (Tr. 216).

Prospective juror Tribou stated that her prejudice against petitioner was based entirely upon television reports, newspaper reports, and the like (Tr. 241).

It is noteworthy that several of the panelists who admitted prejudice had undergone less exposure to the massive pre-trial publicity than several who were permitted to serve.

The issue raised by this series of events, springing from the McClellan committee hearings in march, May and October and ending in petitioner's conviction in December is whether it operated to deprive him unconstitutionally of his right to be tried by a jury of impartial persons. It is respect-

fully submitted that the answer to this question must be yes, and that the conviction must be vacated.

That due process as guaranteed by the Fourteenth Amendment requires trial by an impartial tribunal, or at the very least trial in an atmosphere where every reasonable effort has been made to guarantee impartiality, is now well established."

Mr. Justice Clark, speaking for a unanimous Court in the recent landmark case of *Irvin v. Dowd*, U. S., 6 L. Ed (2d) 751 (1961) stated:

"Although this Court has said that the Fourteenth Amendment does not demand the use of jury trials in a State's criminal procedure, . . . every state has constitutionally provided trial by jury. . . . In essence, the right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, 'indifferent' jurors. The failure to accord an accused a fair hearing violates even the minimal standards of due process."

The scope of the constitutional right to trial by

[&]quot;The sixth amendment guarantees that in all federal prosecutions the accused 'shall enjoy the right to . . . trial by an impartial jury . . . A question is raised whether and to what extent this guarantee is made applicable to state prosecutions by the due process clause of the fourteenth amendment. Even by minimal standards of due process an accused must be accorded a fair hearing, and if this requirement is to have any meaning it would seem the decision of the trier of fact must be substantially determined by what occurs at the hearing . . . thus even by the presently prevailing view that the due process clause requires only those procedures that are 'so rooted in the traditions and conscience of our people as to be ranked as fundamental the standard of the Fourteenth Amendment cannot be distinguished from that of the Sixth on the basis of an absence of a requirement of an impartial trier of fact in the Fourteenth." Note, Community Hostility and the Right to an Impartial Jury, 60 Columbia Law Review 349 (March 1960).

an impartial jury was significantly defined as follows by the Mississippi Court in Seals v. State, 4 So. (2d) 61 (Miss. 1950):

"It means, in addition to the right to be tried by such [impartial] individual jurors, the right to be tried in an atmosphere in which public opinion is not saturated with bias and hatred and prejudice against the defendant; where jurors do not have to overcome that atmosphere, nor the later silent condemnation of their fellow citizens if they acquit the accused."

The case of Irvin v. Dowd, supra, was in many ways strikingly similar to the instant prosecution. There, the defendant was reported to have confessed to a number of murders committed in Indiana and neighboring Kentucky. Prior to his Indiana trial on a charge of committing one of the murders, the newspapers and other public media carried for a long period of time prominent accounts of his alleged confession, of his background and prior criminal history, of an alleged offer to plead guilty, and of various "curbstone" opinions about the case. During the impanelment 62% of the prospective jurors were excused for prejudice, and eight of the twelve who finally heard the case entertained some preconception of guilt, although all eight swore to disregard any such feeling and to decide the issues solely on the evidence presented in court. This Court vacated the conviction (while directing that the petitioner could be retained in custody pending a new indictment); the opinion cuts across the entire field of criminal due process as affected by publicity-engendered community prejudice, and should be quoted here at some length:

"The theory of the law is that a juror who has formed an opinion cannot be impartial."

Reynolds v. United States, 98 U.S. 145, 155.

"It is not required, however, that the jurors be totally ignorant of the facts and issues involved. . . . It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court. [citations omitted].

"The adoption of such a rule, however, 'cannot foreclose inquiry as to whether, in a given case, the application of that rule works a deprivation of the prisioner's life or liberty without due process of law.'... as Chief Justice Hughes observed in *United States v. Wood*, 299, U.S. 123: 'Impartiality is not a technical conception. It is a state of mind. For the ascertainment of this mental attitude of appropriate indifference, the Constitution lays down no particular tests and procedure is not chained to any ancient and artificial formula.'

"Here the buildup of prejudice is clear and convincing. Examination of the then current community pattern of thought as indicated by the popular news media is singularly reveal-

ing. . . .

"It cannot be gainsaid that the force of this continued adverse publicity caused a sustained excitement and fostered a strong prejudice among the people of Gibson County. . . .

"The influence that lurks in an opinion once formed is so persistent that it unconsciously fights detachment from the mental processes of the average man. See Delaney v. United States, 199 F. (2d) 107, 39 A.L.R. (2d) 1300. Where one's life is at stake—and accounting for the frailities of human nature—we can only say that under the light of the circumstances here the finding of impartiality does not meet constitutional standards. . . No doubt each juror was sincere when he said that he would be fair and impartial to the petitioner, but the

psychological impact requiring such a declaration before one's fellows is often its father.... As one of the jurors put it, 'You can't forget what you hear and see.'

Mr. Justice Frankfurter, concurring, stated:

"One of the rightful boasts of Western civilization is that the State has the burden of establishing guilt solely on the basis of evidence produced in court and under circumstances assuring an accused all the safeguards of a fair procedure. These rudimentary conditions for determining guilt are inevitably wanting if the jury which has to sit in judgment on a fellow human being comes to its task with its mind ineradicably poisoned against him. How can fallible men and women reach a disinterested verdict based exclusively on what they heard in court when, before they entered the jury box, their minds were saturated by press and radio for months preceding by matter designed to establish the guilt of the accused. A conviction so secured obviously constitutes a denial of due process of law in its most rudimentary conception."

The Court thus applied, in reversing a state conviction under the Fourteenth Amendment, the following rules for determining whether community prejudice has been such as to deprive an accused of his right to an impartial tribunal:

(1) Since it is virtually impossible for any defendant to present direct evidence that those who judged him were biased, the reviewing court must look to the surrounding events and circumstances to decide the issue. Accord: People v. Williams, 173 N. Y. Supp. 883 (1919); People v. McLaughlin, 44 N. E. 1017 (N.Y.); State v. Dryman, 269 P.(2d) 796, (Mont. 1954); Note, Controlling Press and

Radio Influence on Trials, 63 Harv. Law Rev. 840, 842.

- (2) Even jurors who attempt to be conscientious are subject to subconscious or unacknowledged prejudice which may vitiate the defendant's right to a fair trial. Accord: Shepherd v. Florida, 341 U.S. 50 (1951) (concurring opinion)"; People v. McKay, 236 P. (2d) 145 (Cal. 1951)"; The opinions of Mr. Justice Frankfurter in Pennekamp v. Florida, 328 U.S. 331, and Stroble v. California, 343 U.S. 181.
- (3) Although voir dire examination is the classical method for obtaining impartial jurors, the jurors' assertions of impartiality must be disregarded if the surrounding conditions render them probably inaccurate. Accord: Juelich v. United States, 214 F. (2d) 950 (5 Cir. 1954); People v. Nathan, 249 N. Y. Supp. 395 (1931); and compare

The concurring opinion reads in part as follows:

[&]quot;That prejudicial influences outside the court room, becoming all too typical of a highly publicized trial, were brought to bear on this jury with such force that the conclusion is inescapable that these defendants were prejudged as guilty and the trial was but a legal gesture to register a verdict already dictated by the press and the public opinion which it generated The case presents one of the best examples of one of the worst menaces to American justice."

Reading in part, at p. 150: "However conscientious the members of the jury may have been, it cannot reasonably be concluded that they could so divorce themselves from their past experiences and present surroundings that a fair and impartial trial can be had."

Marshall v. United States, 360 U.S. 310 (1950), and Janko v. United States, 6 L. Ed. (2d) 846.

as they were in Irvin, the conclusion is inescapable that petitioner was forced to trial by jurors who had been ineradicably impressed with prejudic against him. The crimes laid to Irvin were surely more violent; but those laid to appellant by the McClellan Committee and the resultant campaign of public vilification were more wide-spread and shocking to the public, and were unquestionably the subject of more prolonged, intense and defanatory publicity. The so-called "minority" opinion of the court below (signed by four of the eight judges who participated) stated that (R. 867):

"The amount, intensity and derogatory muture of the publicity received by [petitione] during this period is without precedent in the state of Washington."

Further, virtually all of the adverse matter published about petitioner would have been inadmissible at his trial—i.e., it concerned alleged crims other than (although generally of a type similar to) that with which he was charged. This again resembles the Irvin situation, where the defendant's

In the Janko case, a prejudicial newspaper article had appeared on the first day of the trial. Although there was no showing that any of the jurors had read it, the government confessed error in this Court in a memorandum which read in part as follows: "The nature of the newspaper article in question . . . was such as to raise substantial doubt whether if it did in fact reach the jurors the imaginariable prejudicial information could be wiped out of a juror's mind. Marshall v. United States, 360 U.S. 310. . . Accordingly, since it is not clear that petitioner was found guilty by a jury uninfluenced by material plainly prejudicial on its face, we think it proper that the judgment of conviction should be reversed and that the cause be remanded for a new trial."

unrelated past criminal record was recounted. That the pre-trial publicity had taken its fatal effect was similarly shown in both cases by the high percentage of panelists who confessed prejudice and were excused, and by the complete inability of the defendants to find jurors who had not heard of the case, discussed the charges, and been exposed to the massive denunciatory publicity for weeks on end prior to the trial. Finally, it must be emphasized that the charges made and publicized against petitioner did not stem from the private enterprise of newspapers, nor even initially from the sheriff or prosecutor, but rather from an arm of the goverument having the highest prestige and authority: the United States Senate and its official representatives.

The latter element aligns this case with those in which courts have condemned the extra-judicial transmission to the public, by an agency of government of purported information and accusations concerning a prospective criminal defendant. Petitioner was not the victim solely of the relatively uncontrollable sensation-seeking of newspapers. Rather, his plight was directly and deliberately engendered by a Congressional investigating committee which summoned him as a witness after receiving advance notice that he would invoke his constitutional privilege against self-incrimination as to any question concerning his financial affairs; which thereafter, in three appearances extending over a period of months, forced him to invoke that privilege hundreds of times before a nationwide television audience; whose chairman, members and chief counsel systematically publicized "evidence" of his alleged misappropriations; and whose con-

tinued activity by the time of trial, had succeeded in transforming public opinion violently against him. The grave constitutional issues raised by such events were considered in Delaney v. United States. 199 F. (2d) 107 (1 Cir. 1952). The defendant there a Revenue officer, was made the subject of an open congressional investigative hearing at a time when he was pending trial on charges involving misus of office. Although Delaney did not appear as a witness at the hearings, substantial nationwide publicity was afforded the charges against him. On this basis he moved for a reasonable continuance to give the effects of the derogatory publicity a chance to abate, from the denial of which motion he subsequently appealed. The Court of Appeals vacated the conviction, stating:

"Since the Committee evidently felt that there were overriding considerations of public interest which demanded that its open hearings proceed, it must be inferred that the Committee intended, as indeed it must have foreseen that its proceedings would receive the most wide-spread publicity. . . .

"It is fair to say that, so far as the modern mass media of communication could accomplish it, the character of Delaney was pretty thoroughly blackened and discredited as the day approached for his judicial trial on narrowly specified charges. . . .

"We think that the United States is put to a choice in this matter: If the United States through its legislative department, acting conscientiously pursuant to its conception of the public interest, chooses to hold a public hearing inevitably resulting in such damaging publicity prejudicial to a person awaiting trial of a pending indictment, then the United States

must accept the consequence that the judicial department, charged with the duty of assuring the defendant a fair trial before an impartial jury, may find it necessary to postpone the trial until by lapse of time the danger of the prejudice may reasonably be thought to have been substantially removed."

The atmosphere of prejudice against Delaney was held to be such that he was not required to exhaust his peremptory challenges; and the denial of a third continuance was held reversible even though two earlier substantial ones had been granted.

In Delaney, of course, the legislative and prosecuting body were both arms of the federal government. The practical result is the same, and the legal consequences should be the same, where one agency is a state arm and the other federal. In United States v. Florio, 13 F.R.D. 296 (S.D. N.Y. 1952), Judge Kaufman granted a change of venue based upon publicity stemming from the hearings of a state crime commission, and remarked at p. 298:

"It is true that in Delaney both the investigation which stirred up the unfavorable publicity and the prosecution of the defendant were conducted by agencies of the federal government, as distinguished from the New York State Crime Commission and the federal prosecutor in this case. Clearly this is a difference without a distinction, for the result in both instances is the same."

Even if "exposure" were thought to be a valid function of a congressional committee, and even if the hundreds of questions put to petitioner regarding individual transactions were thought to be pertinent to the legislative inquiry, and their pertinency adequately made known to him (see Watkins

v. United States, 354 U.S. 178 (1957); Barenblatt v. United States, 360 U.S. 109 (1959)), still the line should be drawn at the point where the committee's denunciation permeates the public consciousness so thoroughly as to destroy the citizen's right to a fair trial on charges stemming directly from the committee's revelations and brought to court while the hearings are still in session. It is submitted that the government cannot be permitted to destroy a citizen both legislatively and judicially at the same time, or at stubstantially the same time and that this must be true regardless of whether the prosecution stemming from the committee charges occurs in federal or state court. The result in either case is the loss to the individual of his fundamental right to fair treatment—not through the perhaps inevitable workings of mass communications or through any accidental fluctuation of public opinion, but rather through the conscious efforts of an arm of government which must neces sarily have acted with full foreknowledge of the consequences.

The relief petitioner asked against the immense burden of the government's insistent, nine-month-long campaign against him, was either a short respite in time or a change of venue to some county where the public furor might have been less seven. As noted above, these motions were denied on the somewhat self-contradictory grounds that the veriremen of King County could act without prejudice and that there was no guarantee that a fairer trial could be had after the six-month interim requested. It is clear, however, that petitioner was entitled at least to the chance that the public hostility to him.

would abate, and the State would have lost nothing

by a continuance of that length.38

This record shows, as clearly as any record could, that the government-sponsored publicity, whatever it may have accomplished in the fields of politics or labor relations, served simultaneously to defeat petitioner's constitutional right to be judged by an impartial jury. Accordingly, his conviction should be vacated.

VII

CONCLUSION

In summary, the indictment, trial and appellate proceedings in this case all involved serious and substantial denials by the State of Washington of petitioner's right under the Fourteenth Amendment of the United States Constitution to due process

[&]quot;Wide-spread dissemination through the mass media of information and opinions that create hostile sentiment toward a criminal defendant may render the usual procedural remedies totally ineffective to protect the defendant's rights to a dispassionate hearing. . . . Where the time required for community sentiment to fade is not very great, and no mode of procedural relief other than continuance will be effective, these [policy] considerations would not appear to justify relaxing the standards of impartiality, especially since delay of several months cannot often weaken the legitimate aspects of the prosecution's case . . . Since statements by public officials and publicity resulting from legislative investigations, may fall within the concept of governmental action, the due process clauses of the fifth and fourteenth amendments could effectively serve as an indirect control over these sources of hostility by precluding the state from urging its interest and trying a stendant wherever legislative investigations or statements by law enforcement officials have contributed to widegread hostility that cannot be avoided by means of traditional procedural remedies. Note, Community Hostility and the Right to an Impartial Jury, 60 Colum. Law. Rev. 349 (March 1960).

and equal protection of the law. The grand jury which accused him was convened in an atmosphere of the most extreme public passion and hostility arising directly from the deliberate acts of a agency of the federal government; the trial count and prosecutors at that stage, far from minimizing the necessarily prejudicial effects of such public ity, heightened and intensified its effect by focus ing the attention of the grand jurors on the very extra-judicial accusations from which petitioner so desperately required protection; the prosecutor added their own weight and prestige to the public clamor against petitioner by their remarks and conduct during the grand jury proceedings, and at the trial. The state trial court made no effort w determine whether any of the grand jurors who me turned the indictment were biased or prejudical against petitioner by reason of the intensely hostik publicity to which he had been and continued to be subjected, nor were the grand jurors instructed to act solely upon the basis of the evidence presented to them rather than upon purported "public know! edge" and information released, to the saturation point, through the press and other news media. Pe titioner was shortly thereafter forced to trial under circumstances which manifestly defeated his right to a panel of fair and impartial petit jurors; during the trial the prosecutors employed tactics which tended to influence the trial jury to give weight to the fact that the grand jury had indicted petitioner. and to imply that witnesses who had testified farorably to petitioner had either lied or sought refug in the Fifth Amendment right against self-incrim ination in their grand jury testimony; and on the appeal which followed, the State Supreme Court

purported to affirm petitioner's conviction at the cost of abandoning, for this case only, a clearly established system of appeal which should lawfully apply to all accused persons. As a result of this purported "affirmance", respondent now appears to contend in this Court that the law of the State of Washington concerning the right of a defendant to an impartial grand jury and to reasonable continuance or change of venue under the circumstances of this case has not been and cannot be judically determined, with the necessary result (respondent contends) that petitioner must be imprisoned while the state legislature decides the question. Petitioner submits that these are not mere questions of local law, but involve fundamental issues of due process and equal protection of the law of which this Court has always taken cognizance

Petitioner did not and does not now seek immunity from prosecution by the State of Washington. What petitioner earnestly contends is that he was entitled, in the selection of the grand jury and conduct of its proceedings, to at least some minimum protection against bias and prejudice; and to trial before a petit jury at a time and place when and where it might reasonably be expected that the inflammatory and prejudicial statements concerning petitioner which had been widely and intensively disseminated in the press and through other news media should have subsided to the extent that prospective jurors would be relatively free of conscious and subconscious hostility, bias and prejuidce against him.

Aside from its obvious importance to petitioner, the tragedy of this case is that all of the errors of which petitioner now complains could have been avoided without prejudice to respondent by the simple expedient of dismissing the indictment returned by the invalid grand jury, and proceeding by information (if the King County prosecutor believed in good faith as a reliable member of the bar that the evidence at his disposal warranted a prosecution), with a reasonable continuance and/or change of venue granted so that the trial might be conducted "in an atmosphere undisturbed by so huge a wave of public passion" as the record discloses in this case (Cf. Irvin v. Dowd, (1961) 61. Ed 2d 751, at 759.

To the suggestion by four of the judges of the Supreme Court of the State of Washington (who voted for affirmance of the conviction) that the number and novelty of the issues raised by petitioner in appellate proceedings is unjustified in this case because it is merely a "nineteen hundred dollar grand-larceny-by-embezzlement case" (R. 863), it should be pointed out not only that the sentence of fifteen years' imprisonment imposed upon petitioner (R. 27-28) involves a very serious deprivation of his liberty, but, more importantly, that the real victim, when such deprivation of liberty is permitted without true adherence to principles of justice and fairness, is the law itself.

When the prestige and power of the United States Senate is combined (whether deliberately or not) with the fearful omnipresence and persuasiveness of modern media and techniques of mass propaganda to discredit and denounce one who is about to be the subject of grand jury investigation and trial for a criminal offense directly or indirectly related to such extra-judicial accusations, the

courts are called upon to exercise greater vigilance than ever to insure "all the safeguards of a fair procedure."

To paraphrase the concurring opinion of Mr. Justice Frankfurter in Irvin v. Doubd, supra, (6 L.Ed.

2d 760):

"... this is, unfortunately, not an isolated case that happened in [Seattle, Washington], nor an atypical miscarriage of justice due to anticipa-tory trial by newspaper instead of trial in court

before a jury."

We submit that the vital issues of the right to a fair and impartial grand and petit jury presented to this Court today are not peculiar to petitioner's case, but represent one of the most serious problems in the sound administration of criminal justice in twentieth century America, because of the increasing frequency of sensational, publicly televised and reported legislative "investigating" committee hearings, accompanied by the ever-increasing influence of press, radio and television on the public attitudes—conscious and subconscious.

"One of the rightful boasts of Western civilization is that the State has the burden of establishing guilt solely on the basis of evidence produced in court and under circumstances assuring an accused all the safeguards of a fairprocedure. These rudimentary conditions for determining guilt are inevitably wanting if the jury which is to sit in judgment on a fellow human being comes to its task with its mind ineradicably poisoned against him. How can fallible men and women reach a disinterested verdict based exclusively on what they heard in court when, before they entered the jury box, their minds were saturated by press and radio for months preceding by matter designed to establish the guilt of the accused. A conviction

so secured obviously constitutes a denial of due process of law in its most rudimentary conception." (Concurring opinion of Mr. Justice Frankfurter in Irvin v. Dowd, supra, 6 L.Ed. 2d 760).

As four of the judges of the Supreme Court of the State of Washington appraised the situation in

petitioner's case (R. 867):

"In view of the circumstances shown by the undisputed facts stated in the affidavits in this case, I think it would be unrealistic to believe that a very substantial number of the citizens of the community had not adopted, consciously or unconsciously, an attitude of bias and prejudice toward appellant at the time the grand jury was convened. If ever there was a case which required the most stringent observance of every safeguard known to the law to protect a citizen against bias and prejudice, this was it." (Emphasis added)

Since the State of Washington not only did not apply the normal safeguards known to the law for minimizing the effect of bias and prejudice in petitioner's case, but in fact took affirmative steps to insure that the grand jury which accused him and the petit jury which tried him would perform their functions midst a maelstrom of publicity savagely hostile to and denunciatory of petitioner, we respectfully urge this Court to reverse the conviction with directions that the indictment herein be dismissed.

Respectfully submitted, CHARLES S. BURDELL JOHN J. KEOUGH

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APPENDIX "A"

Capsule Summary of the Evidence Introduced at the Trial

The trial in this case commenced on December 2, 1957. The State introduced evidence showing that a certain automobile owned by the Western Conference of Teamsters had been used from time to time by petitioner and other officers of the Teamsters Union (St. 438-443, 472); that in January 1956 the automobile was left at a Seattle garage for the purpose of being sold; that a certain Martin Duffy determined to purchase the car (St. 444-474); that Duffy assumed that the automobile belonged to petitioner, although no one told him so, and because of this assumption made his check for the purchase price (\$1900.00) payable to petitioner (St. 488-490); that Duffy delivered the check to petitioner's secretary (St. 481); that petitioner's secretary made a telephone call to someone in the Teamster's building and that a bookkeeper then came to petitioner's office and delivered an envelope containing the certificate of title to petitioner's secretary, who in turn delivered the envelope to Duffy (St. 475-497); that the sale transaction in no way involved any negotiation between Duffy and petitioner and that petitioner was in fact out of the city at the time of the negotiations for the sale of the automobile and receipt of the funds (St. 488-490); that petitioner's secretary, without instructions from petitioner, deposited the check to the petitioner's personal ac-

References to the Statement of Facts, which was transmitted to this Court in connection with the Petition for Writ of Certiorari, are indicated by the abbreviation "St." followed by the page number to which reference is made.

count because of the fact that it was made payable to petitioner (St. 1020).

One of the prosecutors who assisted in the conduct of the Grand Jury was called as a witness for the State. He testified that petitioner had appeared before the Grand Jury and had there testified that upon his return to Seattle and upon learning of the transaction he repaid the union (St. 639-640). This testimony was corrobated in the Grand Jury proceedings by a bookkeeper of the Teamsters Union whose testimony was made available to petitioner after the trial (R. 378-488). This witness was not called by petitioner at the trial because petitioner had been advised that he had been subjected to misconduct in the Grand Jury room and petitioner's counsel were uncertain as to the effect of such misconduct on the testimony of the witness: and in addition thereto, in the course of the trial of petitioner's son the prosecution had asserted in open court that this witness was evading service of a subpoena (which was never shown to be a fact) and that he, the prosecutor, would not vouch for the creditibility of the witness (R. 758-761). These charges by the prosecutor were reported prominently in the press (R.758-761, 768).

Petitioner introduced evidence showing that there was maintained at the Teamsters building a safe deposit box and that prior to the indictment of petitioner the box contained a large amount of currency (St. 590, 1064-1066). Petitioner also introduced evidence showing that petitioner frequently made contributions to political candidates in currency (St. 590, 592); and in the final agrument, petitioner's counsel argued that petitioner, upon returning to Seattle and learning of the mistaken de-

posit of funds to his account, had returned this sum in currency for the deposit in the safe deposit box and subsequent use for contributions to political campaigns. Petitioner testified in his own defense, but gave no testimony concerning receipt of the \$1900 or the subsequent disposition thereof."

The principal evidence relied upon by the State to prove the element of knowledge and intent consisted of the preliminary work sheets of a certified public accountant employed by petitioner to prepare his income tax returns. These work sheets contained an entry which showed a receipt of nineteen thousand dollars from a "Beck-Callahan" [Cadilac?] transaction. The identifying witness testified that the entry resulted from mis-reading the handwriting on the original ledger sheet (St. 674, 701, 753-754; Ex. 17, Ex. 18). It was definitely shown that these exhibits were not business records nor had the accountant discussed them with or shown them to petitioner or received any instructions whatsoever from petitioner concerning their preparation (St. 660-664, 667, 732, 734, 736, 964, 965, 1110)... These documents were prepared by the accountant by reference to a receipt and disbursement ledger maintained by petitioner's secretary (St. 735, 753-754; Ex. 22). The latter document which the accountant identified as the instrument from which he compiled the work sheet, contained an entry correctly showing the \$1,900.00 to have been a receipt relating to an automobile transaction. Petitioner had not seen the latter document and had given his secretary no instructions with reference

If petitioner had contributed to a candidate for a national elective office he would have been guilty of a violation of 18 USC \$ 610.

to its preparation (St. 964-965, 1110). Neither preparation of these documents nor knowledge of their contents were in any way attributed to petitioner. The trial court, nevertheless, admitted Exhibits 17 and 18 in evidence and the state relied strongly on the erroneous entry, contending that it was proof of petitioner's knowledge and intent, even though the entries had been made by the accountant without the knowledge of petitioner (St. 701, 1317-1319). The theory upon which the State offered and the trial court admitted these documents was never clear (St. 1444). The Supreme Court of the State of Washington held that their admission did not constitute error, apparently upon the theory that it could be assumed that both the accountant and petitioner's secretary testified falsely, and that such testimony warranted the inference that affirmative authentication of the documents and petitioner's knowledge and responsibility therefor could be shown (R. 848-850). The opinion of the Supreme Court of the State of Washington on this point does not accurately summarize the testimony which was claimed to constitute the purported authentication of these documents (St. 660-666, 753, 754). Actually, all of the testimony negated any knowledge on the part of petitioner concerning the preparation of these documents.

The jury returned a verdict of conviction after a trial lasting approximately two weeks (St. 1-1347; (R. 27).

In the

Supreme Court of the United States

OCTOBER TERM, 1960

DAVID D. BECK, Petitioner,
vs.
STATE OF WASHINGTON, Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

RESPONDENT'S BRIEF

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In the

Supreme Court of the United States

OCTOBER TERM, 1961

DAVID D. BECK,

STATE OF WASHINGTON,

Petitioner,
No. 665
Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

RESPONDENT'S BRIEF

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Article I, Sec. 25, Washington State Constitution:

"6 25 PROSECUTION BY INFORMATION. Offenses heretofore required to be prosecuted by indictment may be prosecuted by information, or by indictment, as shall be prescribed by law."

Article I, Sec. 26, Washington State Constitution:

"§ 26 GRAND JUBY. No grand jury shall be drawn or summoned in any county, except the superior judge thereof shall so order."

RCW 2.36.070:

"2.36.070 Qualification of jurors. No person shall be competent to serve as a juror in the superior courts of the State of Washington unless he be

- "(1) an elector and taxpayer of the state,
- "(2) a resident of the county in which he is called for service for more than one year preceding such time.

- "(3) over twenty-one years of age,
- "(4) in full possession of his faculties and of sound mind,
- "(5) able to read and write the English language. [1911 c 58 § 1; RRS § 94. Prior: 1909 c 73 § 1.]"

RCW 10.28.010:

"2.28.010 Challenge to panel. Challenges to the panel of grand jurors shall be allowed to any person in custody or held to answer for an offense, when the clerk has not drawn from the jury box the requisite number of ballots to constitute a grand jury or when the drawing was not done in the presence of the proper officers; and such challenges shall be in writing and verified by affidavit and proved to the satisfaction of the court. [1891 c 28 § 11; Code 1881 § 977; 1873 p 220 § 163; 1854 p 110 § 45; RRS § 2025.]"

RCW 10.28.050:

"10.28.050 Oath of grand jury-Form. The following oath shall be administered to the grand jury: 'You, as grand jurors for the body of the county of, do solemnly swear (or affirm) that you will diligently inquire into and true presentment make of all such matters and things a shall come to your knowledge, according to you charge; the counsel of the state, your own counsel and that of your fellows, you shall keep secret; FOR shall present no person through envy, hatred, or malice; neither will-you leave any person unpresented through fear, favor, affection, or reward or the hope thereof; but that you will present thing truly as they come to your knowledge, according w the best of your understanding, and according to the laws of this state. So help you God.' [1891 c2 § 13; Code 1881 § 981; 1873 p 220 § 167; 1854 p 110 § 49; RRS § 2029.]"

RCW 10.28.070:

"10.28.070 Prosecuting attorney to attend. The prosecuting attorney shall attend the grand jury for the purpose of examining witnesses and giving them such advice as they may ask. 181 c. 28 § 14; Code 1881 § 984; 1873 p 221 § 170; 1854 p 110 § 52; RRS § 2032.]"

RCW 10.37.026:

"10.37.026 Prosecution may be by information. All public offenses may be prosecuted in the superior courts by information. [1909 c 87 §1; 1891 c 117 § 1; 1890 p 100 § 1; RRS § 2024. Formerly RCW 10.37.010, part.]"

STATEMENT OF THE CASE

Petitioner's statement of the case being highly argumentative, respondent does not accept it. Respondent, therefore, submits this statement of the case in the nature of a counter-statement.

On May 20, 1957, King County Superior Court Judge Lloyd Shorett convened a grand jury in Seattle, King County, Washington (R. 312). It is undisputed that the grand jury was called as a direct result of the McClellan Committee hearings which commenced on February 26, 1957, and the publicity flowing therefrom. The publicity in regard to the McClellan Committee hearings for the most part concerned alleged misuse of Teamster Union funds by officers of the union (R. 512-565).

Judge Shorett examined the prospective jurors briefly as to their legal qualifications (R. 312-313). Judge Shorett then examined the individual jurors as to their

general backgrounds and particularly as to prior connections with the Teamsters Union, The Retail Clerks or any affiliated union, and as to whether they had ever been an officer in a union. Certain jurors who had preent or past union connections were questioned by the court as follows:

"THE COURT: Are you conscious of any bias or prejudice arising out of that membership that would prevent you from being a fair-minded juror!

MR. WALLACE: I don't think so.

THE COURT: Have you ever been an officer of any union?

MR. WALLACE: No.

THE COURT: Is there anything about sitting on this grand jury that might embarrass you'at all?

Mr. WALLACE: Not at all." (R. 314);

"THE COURT: Are you conscious of any prejudice arising out of that union service, any bias of any kind?

Mr. MOREAU: Yes.

THE COURT: You feel that your jury service might embarrass you?

MR. MOREAU: It wouldn't embarrass me, it might embarrass somebody else. I am prejudiced to this particular case after reading the newspapers and watching television and comments. I form my own opinion." (R. 317);

"THE COURT: Would service on this grand jury in any way embarrass you?

MR. JOHNSTON: Well, perhaps you misunderstand me. I am presently a member of the Retail Clerks." (R. 318);

"THE COURT: Is there anything about service on this jury that might embarrass you?

Mr. Mabe: Well, I don't know.

THE COURT: How is that?

Mr. Mabe: I don't know. I am awful prejudiced on the case is all I can say. I followed it from . . . "
(R. 318-319);

"THE COURT: Are you conscious of any bias, prejudice or sympathy in this case at all?

MR. EYMAN: That is pretty hard to answer.

THE COURT: Do you feel if you were required to sit here as a juror you could do so, analyzing the evidence and doing what is right and fair?

Mr. EYMAN: Yes sir." (R. 320).

Mr. Moreau, Mr. Johnston, Mr. Mabe and Mr. Eyman were excused from the jury. Mr. Wallace was retained.

After 17 jurors were selected to constitute the grand jury they were sworn (R. 326). The oath required by statute to be administered to grand jurors is found in RCW 10.28.050. It reads as follows:

"10.28.050 Oath of grand jury—Form. The following oath shall be administered to the grand jury: 'You, as grand jurors for the body of the county of......, do solemnly swear (or affirm) that you will diligently inquire into and true presentment make of all such matters and things as shall come to your knowledge, according to your charge; the counsel of the state, your own counsel, and that of your fellows, you shall keep secret; you shall present no person through envy, hatred, or malice; neither will you leave any person unpresented through fear, favor, affection, or reward or the hope thereof; but that you will present things truly

as they come to your knowledge, according to the best of your understanding, and according to the laws of this state. So help you God.' [1891 c 28 § 13; Code 1881 § 981; 1873 p 220 § 167; 1854 p 110 § 49; RRS § 2029]."

Thereafter Judge Shorett gave his charge to the grand jury (R. 326-332). In that charge Judge Shorett told the jury something of the early history of the grand jury and then explained its present day function as follows:

"The grand jury is an investigative body possessed of the power to require the attendance of witnesses and to subpoen abooks, records and similar documents. Its function is to inquire into the commission of crime in the county. Ordinarily this can be done by the regularly established law enforcement agencies such as the prosecuting attorney, but the prosecuting attorney cannot require the attendance of witnesses or compel them to testify, and be cannot subpoen abooks and records. As I shall late explain, the matters you have been called to investigate require the exercise of the peculiar powers granted to grand juries." (R. 327).

The judge then explained some of the statutory mechanics of the grand jury and followed that with the explanation promised in the last quoted sentence above

"We come now to the purpose of this grand jury and the reasons which the judges of this count thought sufficient to justify the expense to the county, and the inconvenience to and sacrifice by you, which this grand jury session will require.

"It seems unnecessary to review the recent testimony before a Senate Investigating Committee except to say that disclosures have been made indi7

cating that officers of the Teamsters Union have, through trick and device, embezzled or stolen hundreds of thousands of dollars of the funds of that union—money which had come to the union from the dues of its members. It has been alleged that many of these transactions, through which the money was siphoned out of the union treasury, occurred in King County. Such crimes, if committed, cannot be punished under Federal law, or under any law other than that of the State of Washington, and prosecution must take place in King County. The necessary criminal charges can only be brought in this county upon indictment by the grand jury or information filed by the prosecuting attorney.

"The president of the Teamsters Union has publicly declared that the money he received from the union was a loan which he has repaid. This presents a question of fact, the truth of which is for you to ascertain.

"You may find that many of the transactions happened more than three years ago; this would raise the question of the statute of limitations, which ordinarily bars a prosecution for larceny after three years. There are some instances, however, where the period is extended. This is a question of law and you should be guided by the advice of the prosecutors on this and similar questions. Your investigation may conceivably result in the adoption of better standards of conduct for union officials.

"Some other inquiries suggested by the Senate investigation are the relationship between the officers of the Teamsters Union and a certain insurance broker; an alleged conspiracy between business men and Teamster officials in fixing prices; and the influence wielded by Teamster officers through campaign contributions to public officials

"To completely investigate all of these items may be beyond the energy and endurance of yourselves the prosecutors and their investigating staff. The financial burden of such a complete investigation may be beyond the resources of King County. I urge you to do all that you can within practical limitations to ascertain the truth or falsity of these charges." (R. 329-330)

Judge Shorett further admonished the grand juron as follows:

"Now, members of the grand jury, that is all lave to say to you in the way of a formal charge. I think you all realize that your names have been selected right from the jury list which in turn is picked from the voters' registration books. You have a most serious task to perform and I know you realize it is being performed, and is to be performed, by a grand jury picked at random from among the citizens in this community, and thus we hope to keep the law close to the people. It is a tremendous responsibility, and I wish you well in your work." (R. 331)

During the course of the grand jury investigation one Fred Verschueren, Jr., testified twice. The first time was on June 20, 1957, and the second was on July 10, 1957 (R. 349, 379). The first time Verschueren was a witness on June 20, 1957, he was examined almost exclusively and at length as to the purchase and sale of automobiles owned by the Teamsters Union (R. 35) 370). Fred Verschueren, Jr., testified that he had worked for the Joint Council of Teamsters since April 15, 1947 (R. 362); that he had been the bookkeeper for

and in complete charge of all of the books of the Joint Council of Teamsters since January of 1955 (R. 351, 353); that he keeps possession of the titles to automobiles owned by the Joint Council (R. 355) and can tell what automobiles are owned by the Joint Council at any particular time by the titles in his possession (R. 356); that automobiles are carried on the union books as auto expense with no depreciation (R. 354); that he can tell how many automobiles have been purchased by the union by cash expenditures and auto expense entries (R. 356); that if a union automobile was traded in on a new purchase it would not show on the union books but the books would just show a lower price for the new purchase (R. 357); that if a union officer obtained title to a union automobile and sold the automobile for cash and gave the cash to Fred Verschueren, Jr., it would show in the union books, but if the cash was not given to Verschueren, it would not show in the books (R. 357); that if there had been such a cash receipt it would show on the union books under miscellaneous receipts with an entry as to what car was sold and to whom it was sold (R. 358); that the books he had with him contained an accurate record of all the receipts and disbursements of the Joint Council from January, 1954 until the present time, and that be could tell from examining those books whether or not there was paid to the Joint Council between January, 1954, and the present date, \$1,850 or any similar amount, for the sale of a 1951 Cadillac car (R. 361); that he could also show whether there was any receipt of any money for the sale of any cars during that period (R. 361); and that he had no recollection at all of a sale of a 1951 Cadillac to one Jack Stratton.

The witness, Fred Verschueren, Jr., was excused for the purpose of examining the books and returned that afternoon (R. 367-368). The witness then testified that there was no record in the Joint Council books of any sale of a car from January, 1954, to the present date nor of the receipt of any amount of money approximating \$1,850 (R. 368). He also testified that in his opinion the records he examined were the complete and total records of the Joint Council for that period of time (R. 368).

On July 10, 1957, Fred Verschueren, Jr., on his own volition returned to testify before the grand jury (R 378-379). At this second appearance at the grand jury investigation the testimony of Fred Verschueren, Jr. consisted of evasion, vacillation, equivocation, vague generalities and loss of memory. On matters in which the witness gave anything resembling definite answers his testimony, despite efforts to arrive at the truth, was largely incredible and full of inconsistencies as illustrated by the following resume of portions of his testimony.

He testified that he came back to clarify his prior testimony; that he had not remembered when he testified previously that petitioner had "turned monies over to me to be held under their proper discretion was realized" and had mentioned something about automobiles; that he didn't recall it until after his prior testimony because it had not come up at that time; that the money was in envelopes and they were sealed and he

was not certain as to the amount (R. 379); that the money was in two envelopes; that the first one was given to him in the fall of 1954 and the second one was given to him some time in 1955; that at some time he had taken the first envelope back to petitioner who had added something to it (R. 380); that it was quite usual for petitioner to give him money in envelopes and petitioner had picked up all other envelopes (R. 381): that the same day he had testified previously he was contacted by petitioner who asked him if he still had the envelopes and he told petitioner that he did; that that was all he was asked by petitioner (R. 381-382): that he is the only one with access to the box where the envelopes are kept; that he does not know if there is any writing on the envelopes; that the last time he looked at them was after petitioner called him (R. 383); that the envelopes were sealed when he got them; that they are unsealed now; that he unsealed them by tearing them open with his finger; that he has never counted the money in its entirety but estimates the amount at \$5,000 to \$6,000 in denominations of 20's, 50's and 100's; that since petitioner gave him the money to hold "until we can determine its proper discretion" it had not entered his mind (R. 384); that petitioner never told him to apply the money as the price of a car sold by the union but did mention something about automobiles (R. 384-385); that despite the fact that the prior inquiry was directed primarily at automobile transactions he did not remember this unusual transaction and has no explanation for this failure of memory (R. 387).

The witness then went to the vault at the Teamsters

hall and returned with the envelopes which were marked and referred to in the grand jury investigation as exhibits 76 and 77 (R. 388-389). Exhibit 76 had the word "stamps" written on it in unknown handwriting (R. 401). Exhibit 77 had the words "Western Conference or J.C." written on it in pencil in petitioner's handwriting (R. 389). Exhibit 76 contained \$3,100 in 20, 50 and f00 dollar bills (R. 451). Exhibit 77 contained \$3,500 in 20's, 50's and two 500 dollar bills (R. 456). Exhibit 77 also contained a pencilled note in petitioner's handwriting which read: "Money from are sales. Check amount, if any, owed to Western Conference or International to apply new purchases. D. B." which note was referred to as Exhibit 79 (R. 455).

The witness testified that the note, Exhibit 79, was in the envelope all the time that he had it (R. 452); that it may not have been put in the envelope until petitioner added money to it (R. 453); that the envelope, Exhibit 77, had not been unsealed until petitioner added money to it (R. 467); that the witness had unsealed it prior to the time petitioner added money to (R. 467); that the note had been in the envelope since the first time the witness had unsealed it (R. 470).

As to the two \$500 bills in Exhibit 77 the witness testified that he could not say whether the bills were part of the original money given to him or whether he put them there himself (R. 457); that he may have change a \$500 bill for someone over the counter (R. 458); this it is very unusual for him to see a \$500 bill and it is not incredible for him to ask for a \$500 bill from the bank even though he was going to use the money to cash checks with and he could not cash them with \$500 bills

(R. 459); that the bills probably came over the counter or from the bank but he definitely does not remember how he got them (R. 460); that he does not think he would remember if he got a \$500 bill to put in there (R. 458); that he thinks he would remember if a \$500 bill came over the counter (R. 466).

As to cashing checks out of the funds in the envelopes, Exhibits 76 and 77, the witness testified that he cashed checks quite a few times, maybe fifty times, but he only resealed the envelopes when he reimbursed the envelopes (R. 395); that he cashed checks imnumerable times (R. 397); that he cashed so many checks that he can't remember any single person for whom he cashed one (R. 404); that he used more than the total amount in one envelope at one time but not more than the total in both envelopes at any one time (R. 404); that he cashed checks out of these envelopes approximately 8 or 10 times in three years (R. 420, 427); that he has been into each envelope at least once (R. 405); and maybe many more than ten times (R. 406); that when he cashed a check he would unseal the envelope and generally reseal it and later reimburse the envelope (R. 389); and that he would unseal the envelopes by slipping his finger along them and would reseal them without using glue but just by re-licking them (R. 392).

As to the note, Exhibit 79, directing that the amount of money owed to the union be determined, the witness testified that he didn't think the note was directed to him even though delivered to him because he had not been definitely so instructed (R. 470-472); that he had no authority to do as the note directed (R. 479); yet he cashed hundreds of checks out of the money (R.

450) and never mentioned it to petitioner or asked he permission to use the money (R. 431) although he did ask petitioner once or twice what to do with the money (R. 427).

The witness testified that the sequence in which is received the money was that petitioner had given him one envelope and later added money to it and still later gave him the second envelope (R. 408); that petitioner gave him the first envelope and later gave him the second envelope and still later added money to the second envelope (R. 434); that petitioner gave him the first envelope and later gave him the second envelope and still later added money to the first envelope and never added money to the second envelope (R. 477-478).

The witness testified that petitioner had given him other envelopes to hold "innumerable times" (R. 3%) and that petitioner had given him other envelopes to hold not over three or four times in the last three years (R. 434).

The witness testified that he is certain the end amount of money originally contained in the envelope is the same as at present (R. 479) although he cashe hundreds of checks out of the money (R. 450) and might have replaced the money in the wrong envelope (R. 450) and never counted the money in the envelopes (R. 384) and had not previously known how much was in there (R. 379).

The witness testified that he cashed checks immerable times out of the envelopes (R. 397) and put in the check or an IOU so the money could be replaced (R. 389) and talked to petitioner on two different occasions

about the money (R. 431) and had been told originally that the money had something to do with automobiles (R. 379) and had read the note in one envelope designating the money as "money from car sales" (R. 453, 455, 470-471) and had last cashed a check out of the envelopes just prior to his original testimony before the grand jury (R. 409) and despite these facts could not remember these monies when questioned at length in regard to car sales in his original testimony (R. 439-440).

The witness found out right after his first testimony on June 20, 1957, that he had forgotten to tell about the money in the union safe (R. 397, 442). He knew it was definitely important testimony (R. 447) yet it was three weeks before he got around to notifying the grand jury of it on July 10, 1957 (R. 378). The way that the witness learned of his oversight was that he ran into petitioner as he was leaving a gas station (R. 443) and petitioner called him over to his car (R. 444). The total conversation consisted of a question by petitioner as to whether the witness still had the money in the vault and the witness answered that he did (R. 445). The witness did not tell petitioner that the grand jury had not been so informed but the petitioner possibly realized it from the amazed or shocked expression on the witness's face (R. 445). As a result of this, the witness was contacted by one of the petitioner's attorneys, Mr. Wesselhoeft, who wanted to see if the envelopes were in the Teamster vault. The witness showed him that they were. About a week and a half after the witness realized he had forgotten to inform the grand jury of this important information he called an attorney for advice and was advised to return and testify. About a week and a half after that the witness finally returned to the grand jury investigation to so testify (R. 440-449).

The grand jury returned indictments against petitioner and his son on July 12, 1957 (R. 1). Because petitioner was and had been a very prominent national and local figure, this event was naturally front page news. During the approximately five months from the date of the indictment to the date of the trial the newspaper coverage of this event was simply factual reporting of events for the most part initiated by petitioner.

During the period from July 12, 1957, to October 1. 1957, there were only four items relating to the indictment. The first three items appeared on July 12 reporting the indictment itself (R. 590-593). The other item appeared September 17 reporting a pre-trial maneuver by petitioner (R. 611). The item at (R. 594 595) is an article on petitioner's career relating a typical Horace Greeley story about the poor boy who work hard and makes good and reaps great benefits for his union. The items at (R. 596, 602, 608-609) relate to petitioner's income tax troubles. The items at (R. 597-601, 605-607) are magazine articles on petitioner's a reer that are not particularly flattering, but neither are they inflammatory. The item at (R. 603-604) relate to the Senate probe in Washington, D.C., and is unrelated to the grand larceny charge. The items at (R 610, 612, 613, 616, 618, 619, 620) relate to the disput between the Teamsters and the AFL-CIO. The items at (R. 615, 617 and 641) were, respectively, a Senator Goldwater interview condemning union corruption is general, a Steelworkers Union official complaining

about Senate hearings, and a Chicago union official condemning both petitioner and Senator McClellan. The items at (R. 621-635 and 638-639) are items from newspapers outside of King County which have negligible circulation in King County. The items at (R. 614, 636, 637, 640 and 642) all relate to the then pending Teamster convention and election. There is nothing in the above factual newspaper reporting nor in the nature of the charge itself which could inflame a community so as to prevent a fair trial.

For the period October 5, 1957, to November 6, 1957, the record contains no news items that related to the grand larceny case against petitioner. The items found at (R. 681 and 692) relate to an internal civil dispute of the Teamsters. The items found at (R. 682, 683, 684-685, 686-689 and 690) are articles about James Hoffa. The items found at (R. 695-696, 698, 699, 701, 702, 705, 708, 709, 710 and 711) are articles about Nathan Shefferman. The item at (R. 703) reports that the AFL-CIO President George Meany deplores union corruption. The items at (R. 697 and 700) report that petitioner's travel expenses to Dan Tobin's funeral were paid by Sears. The item at (R. 691) is a report that a radio ad salesman got a big kick out of seeing petitioner in Las Vegas. The item at (R. 704) reports petitioner's news conference about his dispute with the AFL-CIO. The item at (R. 706) reports that a New York labor official worked for petitioner. The item at (R. 707) reports that an ex-Eisenhower aide had worked for petitioner.

During the period from November 2, 1957, to November 23, 1957, newspaper coverage was confined to

factual reports of events as they occurred. The item appearing at (R. 733) related to the Teamsters' dispute with the AFL-CIO. The item at (R. 743) related to Teamsters unions in Iowa and Minnesota. The items appearing at (R. 734 through 742 and 744) were reports of pre-trial maneuvers by petitioner. The items appearing at (R. 745 through 794) with the exception of those at (R. 774, 776, and 787-788) were factual reports of those things the newspapers considered highlights of the trial of petitioner's son. The items at (R. 774, 776, 787-788) were reports of petitioner's announcements in regard to his management of union affairs.

Newspaper coverage from November 24, 1957, through December 2, 1957, again was factual reporting of news events as they happened. The items at (R. 799, 800, 804, and 806) reported petitioner's news conferences on his membership campaign for the Teamsters The items at (R. 801, 805, and 807) were related to pretrial maneuvers by petitioner. The item at (R. 802) related to petitioner's federal tax case. The item at (R. 803) reported the petitioner's son moved for a new trial. The item at (R. 808) related to Teamster elections. The item at (R. 809) was a small article in Time magazine reporting the conviction of petitioner's son. The item at (R. 810) reported the program of a Teamster Vice-President to provide defense funds for union officials.

The above news coverage during the approximately 5-month period from the date of the petitioner's indictment to the date of his trial was simply factual reports of new events as they occurred containing no inflammatory matter.

The instant case proceeded to trial in Department 17 of the Superior Court of King County on December 2, 1957, before the Honorable George H. Revelle (R. 30).

Petitioner at the beginning of trial challenged the jury panel (R. 31); renewed his motion for continuance (R. 33), asking for a continuance "long enough" to permit the defendant (petitioner) to attend . . . proceedings in Washington, D.C." |a civil action in the Circuit Court of Appeals] (R. 34); and an alternative motion for a one-day continuance to permit proceedings in Federal court to restrain the King County trial so that petitioner might attend the civil trial in Washington, D.C. (R. 35). Petitioner renewed his motion for continuance on the grounds of prejudice and adverse publicity (R. 36). Petitioner, at the same time, made a motion to excuse all prospective jurors who were summoned as prospective jurors in an earlier case of State v. Dave Beck, Jr. (R. 38) or who were excused by either side in the earlier case (R, 38).

The court denied the challenge to the jury panel (R. 40); granted the motion to excuse jurors called as prospective jurors in the earlier case (R. 40); and denied the motion for continuance (R. 40), granting any necessary time to argue injunction proceedings in Federal court (R. 40).

The court excused all prospective jurors who were in the courtroom at any time during the case of State v. Dave Beck, Jr. (R. 46-47). Prospective jurors were called (R. 47), and questioned by the court (R. 49-65). Two jurors were excused by the court because they had opinions as to the guilt or innocence of the defendant

[petitioner] (R. 58, 187); one because of prejudice (R 61); one because of "labor relations" (R. 63) two because of uncertainty of attitude (R. 109, 182); two because of health (R. 112, 120); three because of preconceived opinions (R. 169, 216, 255); one because of a family emergency (R. 183); and one because of an expressed negative frame of mind (R. 186). Other jurors were excused by the court (R. 56, 59, 60, 62, 277).

The court advised the jurors that they would not be allowed to separate when finally selected (R. 54-55); and that they would be able to communicate with their families in connection with articles of personal confort (R. 54, 268).

General questions were asked the jurors by counsel (R. 65-67). Both counsel specifically questioned prospective jurors at great length (R. 67-307).

One juror was challenged by petitioner for an expressed "general prejudice" against petitioner (R 71-73); another for doubts as to his attitude (R. 195-196); another for preconceived beliefs as to petitioner's guilt (R. 241). Each was excused by the court.

One prospective juror, Raymond J. Kraatz, was questioned at length by petitioner on his relationship with labor unions and his attitude (R. 95-102) and was passed for cause (R. 102). He was subsequently challenged peremptorily by petitioner (R. 175), on his first peremptory challenge (R. 175). Petitioner exercised six peremptory challenges (R. 175, 212, 253, 262, 274 and 288).

The respondent exercised four peremptory chillenges (R. 165, 206, 225, 282).

After a jury of twelve persons was selected and sworn (R. 295), an alternate juror was selected (R. 307), one prospective alternate having been excused by the court (R. 298) and one having been excused by the respondent (R. 302).

The case then proceeded to trial on the merits.

The jury thereafter returned its verdict of guilty on December 14, 1957 (R. 27), and on February 20, 1958, judgment and sentence was entered against petitioner (R. 27-28).

SUMMARY OF ARGUMENT

Petitioner received a fair trial before an impartial jury in strict compliance with the standards of due process of law.

To support his complaint that he was denied a fair trial, he relies primarily on news coverage of the event. To be sure, prior to his indictment, he was subject to much derogatory publicity emanating from the Senate hearings in the early part of 1957. However, during the five months from the indictment in July to his trial in December, 1957, the news coverage was in no way prejudicial. The news coverage exhibited in the record does not even show an opportunity for prejudice sufficient to prevent a fair trial, much less show it as a demonstrable reality as required by U.S. v. Handy, 351 U.S. 454. The exhibits of news coverage in the record concerning the grand larceny charge against petitioner during that five-month period mostly relate to pre-trial maneuvers by petitioner. A large percentage of the other news items about the petitioner relate to his news conferences and activities in the conduct of union affairs. All of this news coverage was limited to factual reporting of the news events. Also in the record is a compilation of news coverage of the trial of petitioner's son in a companion case occurring in November, 1957. This news coverage also was limited to factual reports of what news reporters considered the highlights of that trial. There was no attempt by the newspapers to inflame the public against petitioner nor to try his case in the public print.

The impanelment of the trial jury was conducted in a manner well calculated to secure an absolutely fair and impartial jury. The trial judge, in preliminary examinations of jurors on voir dire, emphasized and remphasized the standards for such a body as set out in Irvin v. Dowd, — U.S. —, 6 L.ed. (2d) 751 (1951). Coursel for both sides examined the jurors extensively to determine possible bias. Of the 12 jurors finally selected to try the case, none was challenged by petitioner. An apt description of this stage of the proceedings is a follows:

"The appellant tries to apply the ex post factor to the number on the jury panel who admitted prejudice. Appellant fails to make clear that all such prospective jurors were excused, and that thirteen jurors were selected and accepted by both sides within a very reasonable time. All of the fifty-five people who were examined on voir direct prospective jurors had, of course, heard of the case either through television, radio, or the newspapers, but only nineteen were excused for prejudice." (R 839-840)

The selection of the trial jury complied not only with

the standards set out in Irvin v. Dowd, supra, but also with the strictest application of standards of fair play.

The question of whether grand jurors should be screened for bias during their impanelment is not within the purview of the 14th Amendment of the United States Constitution, but must be determined under the supervisory powers of the appropriate appellate court (U.S. v. Knowles, 147 F.Supp. 19 [1957] (D.C. Wash.); cf. Costello v. U.S., 350 U.S. 329). The due process clause does not apply to state action prior to trial except insofar as it bears on the fairness of the trial itself (Stroble v. California, 343 U.S. 181). This particularly is true as applies to Washington State grand jury proceedings for the reason that the public prosecutor can commence criminal actions at his discretion by filing an information (Wash. Const. Art. I, Sec. 25; RCW 10.37.026). See also Paterno v. Lyons, 334 U.S. 314.

Assuming the due process clause requires unbiased grand jurors in state proceedings, the record here does not show that it existed. Prior to indictment, there was considerable derogatory publicity about petitioner arising from Senate hearings. This, however, can do no more than show an opportunity for bias. At the impanelment of the grand jury, the trial judge questioned each of them briefly as to their general background. Those jurors whose background indicated to the trial judge that they may have some opinion on the matter were questioned as to possible bias. As a result of this, three prospective jurors were excused. Hence, it appears the trial judge did take some steps to secure an impartial grand jury, and in his opinion, based on

personal observation, the jurors selected were impartial. In addition, the jurors were instructed that the were going to determine the truth or falsity of the matters they investigated, and were sworn to:

"... present no person through any envy, hatred, of malice; neither will you leave any person unpresented through fear, favor, affection, or reward of the hope thereof; but that you will present thing truly as they come to your knowledge, according to the best of your understanding, and according to the laws of this state . . ." (RCW 10.28.050)

Neither did the manner in which the witness Verschueren was examined violate the due process clause. The questioning complained of occurred during the second appearance of the witness before the grand jury. That appearance was on his own initiative and his testimony was apparently falsified; hence, the questioner had a duty to question him harshly in an attempt to elicit the truth. Further, the witness was not induced to change his testimony.

The fact that the grand jury had probable cause to indict petitioner is shown by the fact that conviction was obtained on the basis of the evidence adduced at the grand jury hearing; hence, it cannot be said indictment was procured through passion and prejudice.

ARGUMENT

Petitioner Received a Fair Trial Before an Impartial Jury in Strict Compliance with the Standards of Due Process of Law.

Petitioner contends the community feeling in King County, Washington, was such that it was impossible to obtain a fair and impartial jury for his trial. The proper remedy in such a case is either a continuance or a change of venue. Petitioner sought to avail himself of those remedies as indicated in Petitioner's Brief, page 27. On each of those five occasions, the various judges who ruled upon the motions [Judge Hugh Todd (R. 9); Judge Malcolm Douglas (R. 8, 22, and 26); Judge George H. Revelle (R. 40)], by their denial of the motions found that such alleged community feeling did not exist.

Petitioner now has the burden of proving his contention as explained in the following language from United States v. Handy, 351 U.S. 454, 462, 76 S.Ct. 965, 100 L.ed. 1331, 1956:

"While this Court stands ready to correct violations of constitutional rights, it also holds that 'it is not asking too much that the burden of showing essential unfairness be sustained by him who claims such injustice and seeks to have the result set aside, and that it be sustained not as a matter of speculation but as a demonstrable reality.' Adams v. United States, 317 U.S. 269, 281, 87 L.ed. 268, 276, 63 S.Ct. 236, 143 A.L.R. 435. See also Buchatter v. New York, 319 U.S. 427, 431, 87 L.ed. 1492 1496, 63 S.Ct. 1129; Stroble v. California, 343 U.S. 181, 198, 96 L.ed. 872, 885, 72 S.Ct. 599. Justice Holmes, speaking for a unanimous Court in Holt v. United States, 218 U.S. 245, 251, 54 L.ed. 1021, 1029, 31 S.Ct.-2, 20 Ann. Cas. 1138, cautioned that 'If the mere opportunity for prejudice or corruption is to raise a presumption that they exist, it will be hard to maintain jury trial under the conditions of the present day."

The tests to be applied to determine whether petitioner has sustained his burden are exhaustively treated in Irvin v. Dowd, — U.S. —, 81 S.Ct. —, 6 L.ed. (2d) 751, as follows:

"In essence, the right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, 'indifferent' jurors. The failure to accord an accused a fair hearing violates even the minimal standards of due process. Re Oliver, 333 U.S. 257, 92 L.ed. 682, 68 S.Ct. 499; Tumey v. Ohio, 273 U.S. 510, 71 L.ed. 749, 47 S.Ct. 437, 50 A.L.R. 1243. 'A fair trial in a fair tribunal is a basic requirement of due process.' Re Murchison, 349 U.S. 133, 136, 99 L.ed. 942, 946, 75 S.Ct. 623."

"It is not required, however, that the jurors be totally ignorant of the facts and issues involved. In these days of swift, widespread and diverse methods of communication, an important case can be expected to arouse the interest of the public in the vicinity, and scarcely any of those best qualified to serve as jurors will not have formed some impression or opinion as to the merits of the case This is particularly true in criminal cases. To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court Spies v. Illinois, 123 U.S. 131, 31 L.ed. 80, 8 S.Ct. 21, 22; Holt v. United States, 218 U.S. 245, 54 Led 1021, 31 S.Ct. 2, 20 Ann. Cas. 1138; Reynolds v. United States (U.S.), supra.

"The adoption of such a rule, however, 'cannot foreclose inquiry as to whether, in a given case, the application of that rule works a deprivation of the

prisoner's life or liberty without due process of law.' Lisenba v. California, 314 U.S. 219, 236, 86 L.ed. 166, 180, 62 S.Ct. 280. As stated in Reynolds, the test is 'whether the nature and strength of the opinion formed are such as in law necessarily . . . raise the presumption of partiality. The question thus presented is one of mixed law and fact . . .' At p. 156. 'The affirmative of the issue is upon the challenger. Unless he shows the actual existence of such an opinion in the mind of the juror as will raise the presumption of partiality, the juror need not necessarily be set aside. . . . If a positive and decided opinion had been formed, he would have been incompetent even though it had not been expressed.' At p. 157. As was stated in Brown v. Allen, 344 U.S. 443, 507, 97 L.ed. 469, 515, 73 S.Ct. 397."

"The rule was established in Reynolds that '[t]he finding of the trial court upon that issue [the force of a prospective juror's opinion] ought not be set aside by a reviewing court, unless the error is manifest.' 98 U.S. at 156. In later cases this Court revisited Reynolds, citing it in each instance for the proposition that findings of impartiality should be set aside only where prejudice is 'manifest.' Holt v. United States, 218 U.S. 245, 54 L.ed. 1021, 31 S.Ct. 2, 20 Ann. Cas. 1138, supra; Spies v. Illinots, 123 U.S. 131, 31 L.ed. 80, 8 S.Ct. 21, 22, supra; Hopt v. Utah, 120 U.S. 430, 30 Hed. 708, 7 S.Ct. 614."

"... as Chief Justice Hughes observed in *United States v. Wood*, 299 U.S. 123, 145, 146, 81 L.ed. 78, 87-89, 57 S.Ct. 177: 'Impartiality is not a technical conception. It is a state of mind. For the ascertainment of this mental attitude of appropriate indifference, the Constitution lays down no particular

tests and procedure is not chained to any ancient and artificial formula."

The record in the instant case completely negates the contention that the jurors were prejudiced by newspaper coverage or that they were anything but fair and impartial.

During the approximately five months from the date of the indictment on July 12, 1957, to the date of the trial on December 2, 1957, newspaper coverage consisted solely of factual reports of news events as they occurred. (Petitioner describes this news coverage as a "frenzied clamor" [P. Br. 69], and as "denunciation... of almost unbelievable intensity" [P. Br. 72]. If this is so, there must be no words to describe the news coverage in Irvin v. Dowd, supra, and Stroble v. California, 343 U.S. 181.)

Petitioner states that it is "... difficult, at a distance of four years, to reconstruct a transitory period of public furor or hysteria through exhibits and documents ..." (P. Br. 39).

It is, perhaps, much more difficult to place a compilation of newspaper exhibits such as those in the record in the instant case in the proper setting in which they were disseminated to the general public. The news coverage during the 143-day interval between the indictment and the trial is compiled by petitioner at (R 590-810). If we exclude from consideration those exhibits from newspapers outside of King County which have negligible circulation in King County, the compilation constitutes 191 pages in the record. Each of the pages represents only a small part of a regular

newspaper page. Many of the items are from inside pages of newspapers. Assigning the nominal average of 35 pages to a newspaper for each day of publication, we have approximately 5,000 pages of news print for each newspaper during the five months in question. There are two newspapers of general circulation in Seattle, King County, Washington. The two newspapers are of roughly the same size and circulation. Hence, we have approximately 10,000 pages of news print over a five-month period from which to glean the articles comprising 191 pages in the record. In addition to that, it must be realized that a large percentage of the articles in those 191 pages simply do not relate to the instant case and only indirectly relate to the petitioner. Also, much of the pre-trial news coverage was caused by petitioner himself in his various pretrial maneuvers, and much was caused by petitioner's activities and news conferences in regard to regular union business. This is not in any way to be construed as criticism. Certainly, petitioner's counsel had not only a right but a duty to make such maneuvers as he deemed necessary and petitioner's business life cannot be expected to stand still because of his pending criminal trial. The fact remains, however, that petitioner is and was a very prominent national and local figure and almost anything he does is news. Fortunately, local newspaper coverage consisted entirely of objective reporting of news events without editorializing or attempting to try petitioner's case in the public print. Clearly, the news coverage in the instant case does not show a community atmosphere of prejudice as a demonstrable reality. It does not even show an opportunity for community prejudice sufficient to prevent a fair trial.

In each of the instances cited at (Petitioner's Brief 27) when petitioner raised this question, the various trial judges who ruled thereon were in daily contact with the news coverage in issue and able to observe the community atmosphere as it then existed. Each of them found by their denial of the motions that the alleged community prejudice against petitioner did not exist Clearly, this is not "manifest" error under this record. The four judges of the Washington Supreme Court who voted for affirmance also found that the alleged community prejudice at the time of trial did not exist and there is no dispute whatsoever indicated by that court on this point. 56 Wn.(2d) 474, 349 P.(2d) 387 (R. 827).

Further, an examination of the voir dire examination of the trial jury conclusively shows that they were fair and impartial. The trial judge and counsel for each side diligently sought to secure fair and impartial jurors and were successful in their efforts (R. 46-307). The trial judge, perhaps anticipating Irvin to Dowd, supra, emphasized and reemphasized the letter and spirit of the principles therein set out as follows:

"So the test is not whether you have read about it, heard about it, or seen or heard something about it through some media of communication, the test is whether if you were drawn on the jury you would be able to enter upon the trial with an open mind and disregard what you have read, decide the issues in this particular case entirely and pure ly upon the evidence received at the trial and the law as given to you by the instructions of the Court

And I know you know, having served on other juries, that the instructions of the Court are the law regardless of what your personal opinion of the law may be or should be.

"To put the same thing in another way, and I am not now asking you a question to answer yet but I want you to keep this factor in mind, the problem of this question of reading, hearing, and seeing as a member of the public might be put this way. Do you now have an opinion or an impression as to the guilt or innocence of the accused which would require evidence to remove from your mind? If you do have, it is not fair for you to sit upon this jury and it would be a violation of the spirit and letter of the Constitution and laws of this State and of the United States. Neither side in this case should have the burden of having to remove from your minds preconceived opinions of a biased opinion already formed." (R. 52-53)

"The test in this matter is not whether you have read or heard or seen something about the alleged occurrence in some of those media I have mentioned, newspapers, radio or TV, but whether if you were drawn on the jury you are able to enter upon the trial with an open mind and disregard that that you have read heard or seen in that nature and decide the issue here entirely and purely upon the evidence received at this trial and the instructions of the Court as to the law." (R. 180-181)

"It is presumed that when a juror has been selected and accepted by each side that the jurors will keep their minds open until the case is finally submitted to them and it is presumed that the jurors will accept the instructions of the Court as to the law, regardless of the fact and whether the juror may or may not agree with the law. The juror is required to accept the law as expressed by the Court as being the law and applying it. The juror must base his decision therefor upon the law as declared by the Court and the facts garnered from the evidence submitted in the case in this Court, and base his decision upon this law and the facts uninfluenced by any other consideration." (R. 265-266)

"The test, therefore, is not whether you have read or heard or seen something about it in that nature but whether if drawn on the jury, you are able to enter upon the trial with an open mind and disregard what you have read or heard or seen on T.V. and decide the issue here entirely and purely upon the evidence received at the trial and the instructions of the Court as to the law. Or, to put the idea another way, it would be done by asking the question, 'Do you now have an opinion or impression as to the guilt or innocence of the accused which would require evidence to remove from your mind?'

"If you do have such an opinion or impression, neither side should have the burden of having to remove from your minds any preconceived opinion or a biased opinion previously formed." (R. 267)

Each of the 12 jurors finally selected entered the case with an open mind. Examination of the record on voir dire reveals that each of the jurors examined honestly and conscientiously answered the questions put to them by counsel. Petitioner did not interpose a chal-

lenge for cause to any of the jurors finally selected to try the case. As pointed out in the opinion below:

"The appellant tries to apply the ex post facto test of the number on the jury who admitted prejudice. Appellant fails to make clear that all such prospective jurors were excused, and that thirteen jurors were selected and accepted by both sides within a very reasonable time. All of the fifty-five people who were examined on voir dire as prospective jurors had, of course, heard of the case either through television, radio, or the newspapers, but only nineteen were excused for prejudice." 56 Wn.(2d) 474, 475, 349 P.(2d) 387 (R. 828).

In his brief (at pages 30-32), petitioner complains about certain evidence obtained through the grand jury proceedings. Respondent fails to understand petitioner's position in that regard. It has never been claimed that such evidence was illegally obtained or subject to suppression for any reason. It is particularly difficult to understand petitioner's complaint in view of the fact that he concedes at pages 68 and 95-96 of his brief (and tacitly admitted in a pre-trial proceeding before Judge Lloyd Shorett, R. 824), that all of the alleged errors in regard to the grand jury proceedings would be cured if the prosecuting attorney elected to dismiss the indictment and proceed by information. Surely, the evidence would be equally available in that event.

In petitioner's brief (pages 32-33, 71-72), it is claimed that respondent in final argument deliberately sought to induce the jury to consider in their deliberations the publicity of the case, the grand jury proceedings, and the failure of petitioner, when he testified, to cover the issue in the case. A reading of the excerpts

from the final argument (reproduced at R. 307-311) will reveal that this is grossly misleading. The state attorney sought to prevent counsel for petitioner from inviting the jury's attention to these matters as follows:

"MR. REGAL: Your Honor, I object to Counsel's argument. He has been outside the record for quite a few minutes. I ask that Counsel be advised to talk about the evidence in the case and not about all of these extraneous matters not before the jury.

"Mr. BURDELL: I think, if the Court please, there was evidence in this case which warrants a discussion of the consideration of prior testimony." (H. 309)

and, in rebuttal argument, the state attorney admonished the jury:

"You are not to be influenced at all by any sympathy or prejudice. Nothing at all can be considered by you except the evidence from this witness stand." (R. 311)

It is clear from the record that petitioner had notice and opportunity to be heard on the merits before a legally constituted tribunal in strict compliance with the requirements of due process of law.

The 14th Amendment to the United States Constitution Does Not Impose upon the United States Supreme Count the Duty of Supervising State Grand Jury Proceedings

It is not clear whether federal grand juries must be unbiased nor whether voir dire examination must be conducted in that regard.

In U.S. v. Knowles, 147 F.Supp. 19, 20-21 (1957, D.C. Wash.), the district court said:

"Challenges for bias, or for any cause other than

lack of legal qualifications, are unknown as concerns grand jurors. No provision is made for peremptory challenges of grand jurors and no such challenges are permitted. Likewise no voir dire examination exists in respect to grand jurors. In other words, the status of a member of a grand jury may not be questioned except for lack of legal qualifications."

However, in Costello v. United States, 350 U.S. 359, 363, in ruling on a federal grand jury proceeding this court said inter alia:

"An indictment returned by a legally constituted and unbiased grand jury, like an information drawn by the prosecutor, if valid on its face, is enough to call for trial of the charge on the merits."

Mr. Justice Burton in his concurring opinion said at p. 364:

"I assume that this Court would not preclude an examination of grand-jury action to ascertain the existence of bias or prejudice in an indictment."

It is submitted that if this court does undertake such an examination it is an "... exercise [of] its power to supervise the administration of justice in federal courts ..." (Costello v. United States, supra, 363).

The Washington State Supreme Court, in the exercise of its supervisory powers over the Washington courts, is in disagreement as to whether the examination of grand jurors in the instant case was sufficient to show they were unbiased or whether such examination is even necessary under state law. 56 Wn.(2d) 474 (R. 827).

Whether there is a right under the United States

Constitution to an unbiased Federal grand jury is immaterial here. That is a matter to be determined either by application of the 5th Amendment of the United States Constitution or by exercise of the supervisory powers of this court over the lesser federal courts. If there is a right under the United States Constitution to an unbiased grand jury in state proceedings, it must flow from the due process clause of the Fourteenth Amendment. The requirements of due process are set out in Frank v. Mangum, 237 U.S. 309, 326, as follows:

"As to the 'due process of law' that is required by the 14th Amendment, it is perfectly well settled that a criminal prosecution in the courts of a state, based upon a law not in itself repugnant to the Federal Constitution, and conducted according to the settled course of judicial proceedings as established by the law of the state, so long as it includes notice and a hearing, or an opportunity to be heard, before a court of competent jurisdiction, according to established modes of procedure, is due process' in the constitutional sense. [Citations follow]"

The application of the due process clause to pre-trial events is explained in *Stroble v. California*, 343 U.S. 181, 197, as follows:

"When this Court is asked to reverse a state court conviction as wanting in due process, illegal acts of state officials prior to trial are relevant only as they bear on petitioner's contention that he has been deprived of a fair trial, either through the use of a coerced confession or otherwise. Lisenba v. Colfornia, [314 U.S. 219], at 234, 235, 240; Lyons v. Oklahoma, [322 U.S. 596], at 597; Gallego v. Nebraska, 342 U.S. 55, 59, 65 (1951."

Applying the above principles to the instant case, it is apparent that the grand jury proceedings were in no way prejudicial to any Federal Constitutional right of the petitioner.

The cases cited by petitioner do not support a contrary contention. At page 40 of his brief, petitioner cites Cassell v. Texas, 339 U.S. 282; Hernandez v. Texas, 347 U.S. 475; and State v. Piere, 306 U.S. 354. These cases stand for the following proposition. State action which discriminates against a person because of his race violates the 14th Amendment to the Constitution because it denies that person the equal protection of the law. The systematic inclusion or exclusion of persons from grand jury service because of race is such state action and, hence, unconstitutional as to the members of the race discriminated against. A grand jury so impaneled is, therefore, unconstitutional as to members of the race discriminated against, and any action they take against such a person is also unconstitutional ab initio.

Re William Oliver, 333 U.S. 257 (P. Br. 40) held that a summary conviction of a witness in a secret "one-man grand jury" proceedings denied the witness due process of law for the reason that he did not have notice and an opportunity to defend in a public trial.

Petitioner cites Hoffman v. United States, 341 U.S. 479 (P. Br. 40) to support the contention that grand jurors are required to be fair and impartial. In that case, a witness refused to answer questions in a federal grand jury proceeding. A federal court committed him for contempt for refusing to obey its order to answer. It was held that the witness's refusal to answer was rea-

sonable under the 5th Amendment and, hence, he was entitled to remain silent. In the course of that opinion, the court cited Hale v. Henkel, 201 U.S. 43, as an admonition not to abuse the investigatory power of the grand jury (quoted at P. Br. 41). That quotation does not stand for the proposition that the Grand Jury today stands between the public prosecutor and the accused. That quotation in context reads as follows:

"Under the ancient English system, criminal prosecutions were instituted at the suit of private prosecutors, to which the King lent his name in the interest of the public peace and good order of society. In such cases the usual practice was to prepare the proposed indictment and lay it before the grand jury for their consideration. There was much propriety in this, as the most valuable function of the grand jury was not only to examine into the commission of crimes, but to stand between the prosecutor and the accused, and to determine whether the charge was founded upon credible testimony or was dictated by malice or personal ill will."

The above language specifically limits that rule to complaints brought by private citizens and clearly does not apply to the public prosecutor in the State of Washington who, at his discretion, may proceed by information. Washington Constitution, Article I, Section 25. RCW 10.37.026. Indeed in the State of Washington the grand jury cannot stand between the public prosecutor and the accused.

Petitioner contends that the state's available alternative of accusing by information is no answer to his complaint against the grand jury proceedings (P. Br.

67). Petitioner concedes that the alleged errors in the grand jury proceedings would be cured if the state had used the alternative (P. Br. 68, 95-96). This also is recognised by the State Court (R. 829, 883, and 824). That the due process clause does not contemplate that this court shall be a supervisory agency for such accusatory procedure in state courts is demonstrated by the decision in Paterno v. Lyons, 334 U.S. 314, 92 L.ed. 1409. In that case, the accused was indicted by a New York grand jury for receiving stolen property and was subsequently allowed to plead guilty to the lesser, but not included, offense of Attempted Grand Larceny Second Degree. The accused sought to have the judgment set aside on the ground that he had not been indicted on the offense. The New York Constitution provides that a person cannot be prosecuted for such a crime unless on an indictment of a grand jury. In ruling on this question at pages 319-320, the court said:

"Petitioner further challenges the judgment as a denial of due process upon the ground that the indictment charged him with one offense and that the judgment was based on a plea of guilty to an entirely separate offense. This challenge again basically rests on the allegation that under New York law an indictment for receiving stolen property does not necessarily include a charge of an attempt to steal the property. Petitioner's motion to vacate on such a federal constitutional ground appears to be an available procedure under New York law, and the courts below so assumed. Determination of this federal due process question does not depend upon whether as a matter of New York law the Erie County judge erred in permitting petitioner to plead guilty. The question turns rather upon

whether the petitioner under the circumstances here disclosed was given reasonable notice and information of the specific charge against him and a fair hearing in open court. Re Oliver, 333 U.S. 257, 273, 278, ante 682, 694, 696, 68 S.Ct. 499; Cole v. Arkaneas, 333 U.S. 196, 201, ante, 644, 647, 68 S.Ct. 514. We agree with the New York courts that this petitioner had such notice and information. The fairness of the hearing afforded petitioner is not challenged."

This principle is also demonstrated in Frisbie v. Collins, 342 U.S. 519, 72 S.Ct. 509, 96 L.ed. 541, wherein it was held that securing the presence in court of a criminal defendant by kidnapping him does not invalidate the trial on the merits. This principle is again demonstrated by the following language from Stroble v. California, 343 U.S. 181, 197:

"When this Court is asked to reverse a state court conviction as wanting in due process, illegal acts of state officials prior to trial are relevant only as they bear on petitioner's contention that he has been deprived of a fair trial, either through the use of a coerced confession or otherwise. Lisenbe v. California, [314 U.S. 219], at 234, 235, 240; Lyon v. Oklahoma, [322 U.S. 596], at 597; Gallego v. Nebracka, 342 U.S. 55, 59, 65 (1951)." (Stroble v. California, 343 U.S. 181, 197)

Petitioner Has Not Shown the Existence of Bias in the State Grand Jury Proceedings.

Assuming arguendo that petitioner's rights under the due process clause would be violated if bias on the part of one or more of the grand jurors was found to exist, petitioner has not shown such to be the fact in the instant case. The gist if the petitioner's argument is that standards applied to petit jurors must be applied to grand jurors to determine this question. By that standard, petitioner has the burden of showing bias, not as a mere opportunity for it to exist, but as a demonstrable reality. United States v. Handy, 351 U.S. 454, 462.

The only thing in the record to indicate bias at the time of impanelment of the grand jury is the compilation of news coverage at R. 507-589, and the impanelment of the grand jury at R. 312-332. The compilation of news coverage certainly can do no more than establish a "mere opportunity" for bias. An examination of the record of the impanelment of the grand jury reveals that those proceedings were well calculated to secure jurors who would act fairly. It is not disputed that the specific directions of the grand jury statutes were followed.

As a result of Senate hearings in the early part of 1957, the Washington State Bar Association requested King County Supreme Court Judges to call the grand jury (R. 593). As announced in the newspapers (R. 536) on May 3, 1957, the grand jury was called for the specific purpose of investigating the possible misuse of Teamsters Union funds by petitioner and one Frank Brewster. Calling a grand jury for a specific purpose is established procedure in the State of Washington as indicated in: Blanton v. State, 1 Wash. 265, 270; State v. Krug, 12 Wash. 288, 290; State v. Heaton, 21 Wash. 59, 60; State v. Guthrie, 185 Wash. 464, 476.

Because of the specific purpose for which the grand jury was called, the trial judge gave a brief objective explanation to the grand jury of the nature of the inquiry they should conduct and the broad applications of law which required it (R. 329-330, pp. 3 to 8 above).

The trial judge admonished the jurors twice to determine the truth or falsity of the allegations (R. 329 330) and swore them to:

"... present no person through envy, hatred, or malice; neither will you leave any person unpresented through fear, favor, affection, or reward or the hope thereof; but that you will present things truly as they come to your knowledge, according to the best of your understanding, and according to the laws of this state." (RCW 10.28.050)

There is nothing in the record to show that the grand jurors violated their oath. The procedure followed is tantamount to an indictment formally laid before them for their consideration and certainly is not prejudicial to the person or persons under inquiry. Petitioner claims this prejudiced the jury toward him relying on the following cases cited at page 62 of petitioner's brief:

Fuller v. State, 85 Miss. 199, 37 So. 749 (1905); Blake v. State, 54 Okla. 52, 14 P.(2d) 240 (1932); Clair v. State, 40 Neb. 534, 59 N.W. 118 (1894); and State v. Will, 97 Iowa 58, 65 N.W. 1010 (1896) (App. Br. 49, 50). These cases are not apposite.

In Fuller v. State, 85 Miss. 199, 37 So. 749 (1905), the court reversed a conviction upon indictment for uplawfully selling liquor, holding that it was error for the trial court to say to the grand jury in his charge. "Have you ever heard of Charlie Fuller?" [the defendant] because, in context, it was tantamount to a

direction to indict; and for the court to say in the presence of the petit jurors in overruling a motion for continuance "There has been much complaint over the state about the failure to convict these criminals . . ." and that the court feared "much was due to the application of a defendant's lawyers for continuance and the disposition of the courts to indulge it, and the lack of speedy trials."

In Blake v. State, 54 Okla. Cr. 62, 14 P.(2d) 240 (1932), the court reversed a conviction upon an indictment for destroying public records where in its charge to the grand jury, the court referred several times to the defendant by name and where the grand jury was coerced into returning the indictment by discharge of one grand jury which returned no indictment and reimpaneling the grand jury, and the court sustained a challenge by the state to persons who had voted against the indictment in the previous proceeding.

In Clair v. State, 40 Neb. 534, 59 N.W. 118 (1894), the court reversed an adjudication of contempt. The trial court had held the defendant in contempt for filing a motion to quash an indictment returned against his client on the ground, inter alia, of inflammatory remarks by the judge in his charge to the jury. The court held that the criticism was merited where the court in its charge to the jury directed its attention to the specific charge of bribery, stated that it was the grand jurors' duty to indict therefor, and concluded "there comes up from the people a command for a forward march all along the line of your duty. You should give heed to that cry, for it comes from a patient and long-suffering endurance which has at last reached its limit."

In the instant case, the State prosecuting attorneys attended the grand jury proceedings as required by law (RCW 10.28.070) for the purpose of assisting the grand jury in its investigation. They were not conducting a trial. Their duty, among other things, was to interrogate witnesses to learn of offenses committed in the County. As to the propriety of the type of questioning complained of, the trial court (prior to reading the testimony) observed as follows:

"Now my notion on this thing before us now is that someone, a prosecutor or deputy prosecutor, said to a witness, 'Why, nobody believes you. Can't you tell that we all know you are lying?'—my notion is that this sort of a statement is one which has occurred before practically every Grand Jury held in this county that I have ever heard about and that it is not only the right but perhaps the duty of the prosecutor to attempt to elicit whatever information is available by being a little harsh with witnesses whom he believes are falsifying." (R 825)

In fact, the questioning of the witness was very harsh. The nature of the witness's testimony is set out in respondent's statement of the case above. As there indicated, it was full of inconsistencies, evasions, and loss of memory.

The same witness, three weeks before, had been questioned closely as to whether the union had ever received money from sale of its cars as reflected by the books (R. 349-377). As it developed, this testimony we very damaging to petitioner. Then the witness came back after the three-week interval and said he had \$6,600.00 from car sales which had been in his possess.

sion all of the time and which he had been using regularly and had completely forgotten about when questioned closely about this matter three weeks earlier (R. 378-487). In short, "It was patently a defense that could be contrived to meet the exigencies of the case" (R. 829). Under these circumstances the investigators had a duty to question harshly. The trial court, after reading the testimony, found that the conduct of the prosecutors did not affect the testimony of the witness and concluded that no rights of the petitioner were violated. His opinion is set out at R. 673-675. The trial court's conclusion of State law was upheld by four of the State's Supreme Court Judges with four disagreeing. Hence, the question of whether this conclusion of State law is error is still undecided. The answer to this question is immaterial to the application of the due process clause of the United States Constitution to the instant case for the reason that the due process clause only applies to the trial on the merits. (See Paterno v. Lyons, 334 U.S. 314; Frisbie v. Collins, 342 U.S. 519; and Stroble v. California, 343 U.S. 181.

Petitioner contends the State prosecuting attorneys' conduct before the grand jury was prejudicial, relying on the following cases; United States v. Wells, 163 Fed. 313 (D.C. Idaho, 1908); Attorney General v. Pelletier, 240 Mass. 264, 134 N.E. 407 (1922); State v. Crowder, 193 N.C. 130, 136 S.E. 337 (1927); and People v. Benin, 186 Misc. Rep. 548, 61 N.Y. Supp. (2d) 692 (1946). None of these cases are in point and all are clearly distinguishable.

In United States v. Wells, 163 Fed. 313 (D.C. Idaho

1908), the court quashed an indictment where after the evidence was taken, the district attorney, without the request of the grand jury, proceeded to argue his conclusions and directed the grand jury to return an indictment against the defendant, stating that he was acting under specific instructions from the Department of Justice at Washington; would not permit the grand jurors to discuss the case; and the next morning went into the grand jury room and refused to leave until the grand jury returned and signed the indictment. The court stated that this, in combination with the fact that one defendant was indicted without substantial evidence, gave rise to a presumption of prejudice. The court's findings were based upon affidavits of the grand jurors.

In Attorney General v. Pelletier, 240 Mass. 264, 134 N.E. 407 (1922) a proceeding by the attorney general to remove the district attorney from office, the court held that it was proper for the foreman and another member of the grand jury to testify concerning alleged misconduct of the district attorney before the grand jury. The court stated that where the district attorney, while the grand jury was deliberating, and before it voted, discussed the evidence before them, it was not within the requirement that the "Commonwealth Counsel" be kept secret, since it was not the "Commonwealth Counsel" within the meaning of the grand jury to oath.

In State v. Crowder, 193 N.C. 130, 136 S.E. 37 (1927), the court reversed a conviction for embershment. The court, after pointing out that the North

Carolina decisions "are to be classed among those which discountenance the custom of permitting the prosecuting attorney to attend the sessions of the grand jury" (at p. 338), stated that while the mere presence of the solicitor [the prosecuting attorney] in the grand jury room would hardly be sufficient cause for granting a plea in abatement, such a plea would be granted where the solicitor not only appeared in the grand jury room, but also explained the testimony to the grand jury and advised and procured their action in finding a true bill.

In People v. Benin, 186 Misc. Rep. 548, 61 N.Y.S. (2d) 692 (1946), the Court of General Sessions held that the defendant was entitled to inspect minutes of the grand jury since it was alleged and admitted that the district attorney had addressed the grand jury off the record and without the presence of the stenographer, the court being of the opinion that such statements, if given, should have been made in the presence of the grand jury stenographer and on the record.

In Mooney v. Holohan, 294 U.S. 103 (P. Br. 66), the prosecutors obtained conviction by presenting evidence they knew to be perjured.

Berger v. U.S., 295 U.S. 78 (P. Br. 67) was a case of persistent misconduct by the prosecutor in a trial on the merits such as to affect the outcome.

Eubanks v. Louisiana, 356 U.S. 584 (P. Br. 67) was reversed because of racial discrimination in selecting the grand jury panel.

Petitioner, in pages 42-50 of his brief, apparently takes the position the authorities he cites therein support the proposition that persons not held to answer

prior to the impanelment of a Grand Jury have a right to conduct an ex post facto voir dire examination as to whether the grand jurors were biased. Authorities therein cited do no more than to allow such a person to challenge the Grand Jury for failure to comply with specific statutory requirements corresponding to RCW 10.28.010 and 2.36.070, which read as follows:

"10.28.010 Challenge to panel. Challenges to the panel of grand jurors shall be allowed to any person in custody or held to answer for an offens, when the clerk has not drawn from the jury but the requisite number of ballots to constitute a grand jury, or when the drawing was not done in the presence of the proper officers; and such challenges shall be in writing and verified by affidaviand proved to the satisfaction of the court. [189] c. 28 § 11; Code 1881 § 977; 1973 p. 220 § 263; 1854 p. 110 § 45; R.R.S. § 2025.]"

"2.36.070 Qualification of jurors. No person shall be competent to serve as a juror in the superior courts of the state of Washington unless he be

- (1) an elector and taxpayer of the state,
- (2) a resident of the county in which he is called for service for more than one year preceding such time,
 - (3) over twenty-one years of age,
- (4) in full possession of his faculties and of sound mind,
- (5) able to read and write the English language [1911 c. 57 § 1; R.R.S. § 94. Prior: 1909 c. 73 § 1]"

What petitioner fails to recognize in his argument's that he was allowed to interpose a challenge some three months after the indictment, but the grounds therefor were held insufficient.

Petitioner, at page 34 of his brief, claims that this entire grand larceny proceeding was an integral part of the Senate Committee's successful effort to destroy him as a public figure. It is submitted that whether or not this is true is immaterial to the question of whether petitioner received due process of law in his trial on the merits. If such was the motive of the Senate Committee, the efficacy of such a procedure is explained in Delaney v. United States, 199 F.(2d) 107 (1 Cir. 1952) as follows:

"We limit our discussion to the case before us, and do not stop to consider what would be the effect of a public legislative hearing, causing damaging publicity relating to a public official not then under indictment. Such a situation may present important differences from the instant case. In such a situation the investigative function of Congress has its greatest utility; Congress is informing itself so that it may take appropriate legislative action; it is informing the Executive so that existing laws may be enforced; and it is informing the public so that democratic processes may be brought to bear to correct any disclosed executive laxity. Also, if as a result of such legislative hearing an indictment is eventually procured against the public official, then in the normal case there would be a much greater lapse of time between the publicity accompanying the public hearing and the trial of the subsequently indicted official than would be the case if the legislative hearing were held while the accused is awaiting trial on a pending indictment." (Emphasis supplied)

Also in this regard, the court below said:

"The grand jury is now used not as a shield against the zealous prosecutor, as in times past,

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but to replace, on occasion, the prosecutor who is not sufficiently zealous (for whatever reason), and more often, as presently, as a valuable but erpensive weapon (hence, used sparingly) to assist a prosecutor in investigating conditions and people insulated from investigation by the usual procedures. It has been said that,

"The inquisitorial power of the grand jury is the most valuable function which it possesses to-day and, far more than any supposed protection which it gives to the accused, justifies its survival as an institution. As an engine of discovery against or ganized and far-reaching crime, it has no counterpart 'In re Grand Jury Proceedings, 4 F. Supp. 283, 284 (E. D. Pa. 1933)." (56 Wn.(2d) 474, 476, (R. 830)).

At pages 68-69 and 95-96, petitioner asks why did m the prosecuting attorney dismiss the indictment and proceed by information so as to cure all the alleged errors in the grand jury proceedings. Also therein, pe titioner compares the prosecuting attorney to Pontis Pilate and infers that the prosecutor could not believe "... in good faith as a reliable member of the bar that the evidence at his disposal warranted a prosecution ..." (R. 96). The answer to this is that, at the instant of the Board of Governors of the Washington State Bar Association, King County Superior Court Judge commenced the grand jury proceedings, not the pror cutor; that the evidence necessary for the prosecution was only available through the grand jury power d subpoena; and that when the indictment was returns there was nothing more to do to join the issues asis from petitioner's being arraigned. The motion to #

aside the indictment was not filed for over three months, the grounds cited therein were not well taken, and it matters not whether petitioner is charged under a document entitled "indictment" or "information." As to the prosecutor's role as Pontius Pilate, petitioner's position is inconsistent. On the one hand, petitioner accuses the prosecutor of exercising a partisan attitude so as to stampede the grand jury into bringing in the indictment. On the other hand, he infers that the prosecutor believes charges should not be brought at all. It is submitted that the motives or beliefs of the prosecutor are completely immaterial to the issue of whether petitioner was fairly convicted on the merits.

It is submitted that petitioner's argument at pages 59-62 of his brief, to the effect that it is prejudicial to seek to exclude from the grand jury those persons from the "class" under investigation, is frivolous.

At pages 69-75 and in the appendix of his brief, petitioner's argument relates to evidence adduced at the trial and affirmance by an equally divided court.

The matter of evidence adduced at the trial will not be argumed for the reason that it is not properly a part of the questions presented (R. 912-913), and for the further reason that that question is completely answered by four judges of the court below. State v. Beck, 56 Wn.(2d) 474, 494-496 (R. 848-850). The other four judges participating do not indicate any disagreement on this point.

The question of affirmance by an equally divided court was specifically excluded by the Order Allowing Certiorari (R. 911-913).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment of the State court should be affirmed.

Respectfully submitted,
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In the Supreme Court of the United States

October Term, 1961

DAVID D. BECK,

Harrison Barre

Petitioner,

VS.

STATE OF WASHINGTON.

Respondent.

PETITIONER'S REPLY BRIEF

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WASHINGTON

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INTRODUCTION

with the important constitutional problems of this case. In effect, it asks this Court to affirm on the basis that ordinary procedural forms were observed by the trial court—that is, an oath was administered to the grand jurors, the petit jurors were admonished to decide the case on the evidence, and so on. Such an approach, if followed, would vitiate every constitutional inquiry in a case of this type. If the observance of judicial formalities were decisive, few if any due process cases could be decided otherwise than against the individual. The inquiry must go to the substance of what happened; by that standard, the conclusion

is inescapable that this petitioner has been indicted, convicted and sentenced without due process or equal protection of law.

The sequence of points adopted by respondent will be used in replying to its contentions. The section headings which follow are intended to indicate the three basic questions of the case.

WAS PETITIONER DEPRIVED OF HIS RIGHT UNDER THE POURTEENTH AMENDMENT TO THIAL BY AN IMPARTIAL JURY?

Pirst, respondent claims (Br. 22) that "there was no attempt by the newspapers to inflame the public against petitioner." The apparent purport of this is that since no malice has been shown on the part of those who operate the public media, nothing which they did can now be claimed by petitioner to have led to deprivation of his constitutional rights. Even if this were true, it would miss the point. The State's reasoning recalls the comment of the ancient post Bion that, though boys throw stones at frogs in sport, the frogs do not die in sport but in carnest."

It is of course not the intentions of the press or even of the Senate committee that count, but rather the affect of their activities upon the grand and putit juries which indicted and tried petitioner.

Similarly, respondent persistently refers to the publicity adverse to petitioner as "factual reports of news events" (e.g., at Br. 28). (It is worth noting that throughout its brief respondent mentions only the publicity from and after the date of the indictment; the massive attacks upon pe-

¹ Cited in Edmand Cahn, The Sense of Injustice (New York University Press. 1949), p. 113.

titioner which took place from March to July are nowhere touched upon, and their inevitable effects are ignored.) Respondent's position has this much merit: if attacks upon an individual as a thief and racketeer by innumerable highly-placed persons constitute news, then indeed most of the publicity between the indictment and the trial constituted reporting of news events. Typical of such coverage were the Saturday Evening Post article of August 24, 1967 entitled "Can Labor Live Down Dave Beck?" (Tr. 605) and newspaper headlines such as that of October 1, 1967, "Beck Called Symbol of Corruption" (Tr. 641). Obviously, whether such publications are characterized as reportage or editorials, their prejudicial effect is as great. Indeed, in the recent case of Irvin v. Dowd, 366 U.S. 717, 6 Law Ed. (2d) 751 (1961), most of the publicity could have been described as reporting of "news events" in the sense that the defendant's confession, his offer to plead guilty, his denunciation by other citisens, and so on, constituted news.

In any event, there was in fact a great deal of editorializing throughout 1957 pertaining to petitioner. Much of it was couched in terms of "labor corruption"—but here as elsewhere, such publicity must be read and understood in the light of the Senate committee's sustained attack upon petitioner individually and in light of the sensational reaction which took place throughout the country, and especially in petitioner's home town. It has been impossible to incorporate all such publications in the exhibits in this case. This fact should also be borne in mind with regard to respondent's contention (Br. 2) that only 191 pages of adverse written matter has been supplied. Petitioner has made clear

throughout the literal impossibility of assembling more than an illustrative fraction of what was published against him. The statistics set forth by respondent are only an attempt to evade the reality of the situation.

Moreover, respondent totally overlooks television and radio publicity. This, particularly the television material, had an incalculable effect. It is impossible to reproduce such matter here. However, the many affidavits submitted in petitioner's behalf concerning it have at all times remained uncontroverted.

The state argues further that much of the adverse publicity did not relate to this case. Yet clearly, publicity concerning other alleged crimes of an accused arouses even greater community hostility. See Delensy v. United States, 190 F. (2d) 107 (1 Cir. 1962).

Respondent also asserts (Br. 25) that the judges below "found" that community hostility did not exist. An examination of the record will show that this is not true. No such finding was ever made. Petitioner's motions for continuance and change of venue were denied on the grounds that petitioner's arguments "did poor credit" to the prospective jurors of the county, and that there was no guarantee that a fairer trial could be obtained six months later (R. 726).

At Br. 30, respondent asserts that the "voir dire examination of the trial jury conclusively showed that they were fair and impartial." The answer to this is that jurors' assertions of impartiality must be disregarded where the surrounding circumstances make them inherently doubtful. See Irvin v. Doud, supra; Marshall v. United States, 360 U.S.

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310 (1960); Juelich v. United States, 214 F. (2d) 950 (5 Cir. 1954); People v. Nathan, 249 N.Y. Supp. 395 (1931).

Reliance is placed upon various admonitions of the trial judge to the jury (Br. 30-32). It should be noted that the portions quoted by respondent contain no fewer than three separate reminders to the jury that their having read and heard publicity was not in itself disqualifying, thus inviting them to announce themselves as qualified. Further, the trial court advised them, regarding the publicity, that:

"No intelligent person would rest a decision on such an impression without a more formal and more convincing type of proof." (R. 52-53).

The quoted remark, of course, supplied still another invitation to the jurors to assert impartiality. In this context, it is not realistic to accept such assertions.

At Br. 33 respondent contends that petitioner interposed no challenge for cause against the twelve jurors finally selected. This is incorrect. A challenge to the entire panel, and motions for continuance and change of venue, were entertained and renewed at all times on the express ground that the jurors could not act impartially.

Citing United States v. Handy, 351 U.S. 454 (1956), respondent states (Br. 25) that petitioner's burden is to show essential unfairness "as a demonstrable reality." But the State seems to interpret this rule to mean that the defendant must come forward with some kind of direct vidence of impartiality, perhaps such as affidavits from jurors that they had consciously lied upon voir dire examination. Such is not the meaning of the rule, and such

a burden would be impossible for any defendant to bear. As shown by Irvin v. Dowd, supra, the petitioner can only be expected to show a sustained buildup of prejudice in the community to an extent where due process must have been denied. Here, that occurrence has been shown clearly and convincingly. The State, and four of the eight judges below, have asserted that "only nineteen" of the fifty-five veniremen subjected to some degree of voir dire examination were excused for prejudice (see Br. 33). Yet all of the twelve who tried the case had heard of it in advance, and eleven admitted having been exposed to the adverse pretrial publicity. Of the latter, many had undergone far more exposure than many of the nineteen who were excused. It is not the admitted prejudice of some jurors which is now the concern, but the unconscious or unacknowledged prejudice of the others. As this Court said in Irvin v. Dowd:

"No doubt each juror was sincere when he said that he would be fair and impartial to petitioner, but the psychological impact requiring such a declaration before one's fellows is often its father."

Under the circumstances of this case, true impartiality could not have existed at the time and place of the trial.

DID PETITIONER HAVE THE RIGHT TO A FAIR AND IMPARTIAL GRAND JURY, AND TO BASIC FAIRNESS IN GRAND JURY PROCEDURE, UNDER THE FOURTEENTH AMENDMENT?

Although this issue formed the heart of the dispute among the equally divided judges below, it is barely touched upon by respondent in its brief. The four judges who voted for affirmance below

have unequivocally held that the Fourteenth Amendment does not include any right to fair and impartial grand jurors or to elemental fairness in grand jury procedure. It is submitted that this view, if adopted, would lead to the most flagrant deprivations of constitutional rights through the improper use of grand jury proceedings.

Respondent at Br. 34-40 makes no direct argu-

Respondent at Br. 34-40 makes no direct argument on the subject. Instead, it is argued that the Fourteenth Amendment protects a criminal accused in a state proceeding only at the trial stage. The short answer to this is the first sentence of the opinion in Cassell v. Texas, 339 U.S. 282:

"Review was sought in this case to determine whether there had been a violation by Texas of petitioner's federal constitutional right to a fair and impartial grand jury."

Indeed, if the State were correct this Court

Indeed, if the State were correct this Court could never have decided a grand jury case on federal constitutional grounds. Yet, many cases of fundamental importance have been so decided, and it is clear that the standards of fairness implicit in the Fourteenth Amendment have been and must be applied to state grand jury proceedings. See Cassell v. Texas, supra; Hernandez v. Texas, 347 U.S. 475; State v. Pierre, 306 U.S. 354; Re Oliver, 333 U.S. 257; Eubanks v. Louisiana, 356 U.S. 584.

Further, it is submitted that basic unfairness at the grand jury stage virtually ipso facto deprives the accused of a fair trial. The trial of the present case was infected throughout with prejudicial matter stemming from the unlawful use of the grand jury. For example, a prospectively important witness, Fred Verschueren, Jr., was threatened, intimidated and rendered for all practical purposes unavailable; the fact that petitioner's secretary had

invoked the Fifth Amendment before the grand jury was indirectly but effectively used by the prosecutor at the trial; a former mayor of Seattle was permitted to testify from recollection to what petitioner had allegedly told the grand jury; and the prosecutor in final argument referred with vigor to the fact that the grand jury had chosen to return a true bill. See petitioner's brief 29-33, 69-75.

The State has suggested no reason why grand jury proceedings should be exempt from constitutional requirements of fairness. It is hard to imagine one. Fairness and impartiality of the tribunal, and basic fairness in procedure, are the foundation stones of criminal due process under the Fourteenth Amendment. Nothing in our history suggests that the grand jury is intended to be a lawless sword in the hand of the prosecutor. On the contrary, the requirement of Amendment V of the United States Constitution of indictment by grand jury in federal prosecutions suggests that the institution is intended as well to be a shield protecting the rights of the public.

It is no answer to claim, as the State does, that the proceeding could have been initiated by information (Br. 38) or that petitioner has "conceded" that the errors herein could have been cured by dismissing the indictment and later filing an information (Br. 33). Petitioner has intended no such concession (see supra regarding the manner in which the unlawful grand jury procedure infected the trial); rather, petitioner's position is that the deprivation of constitutional rights here involved could have been avoided had an information been used in the first instance. The law is that

where a state does elect to proceed by grand jury, it must do so in a constitutional manner. See Eubanks v. Louisiana, 356 U.S. 584; Ballard v. United States, 329 U.S. 187.

HAS PETITIONER SHOWN THAT HE WAS DEPRIVED OF HIS RIGHT TO A FAIR AND IMPARTIAL GRAND JURY, AND TO BASIC FAIRNESS IN GRAND JURY PROCEDURE?

Although conceding that the grand jury was called "as a direct result of the McClellan committee hearings which commenced on February 26, 1957, and the publicity flowing therefrom" (Br. 3), respondent avoids entirely the responsibility of summarizing or describing that publicity. The record makes abundantly clear that there could be no disagreement with the statement of four of the eight judges below that:

"The amount, intensity and derogatory nature of the publicity received by appellant during this period is without precedent in the State of Washington." (R. 867)

Beyond a flat one-sentence assertion that bias has not been shown (Br. 40) respondent makes no argument on the point. Instead, the State contends (Br. 5, 42) that a state statute requires the grand jury to take an oath which includes the words "you shall present no person through envy, hatred, or malice," and that this oath must have been given to this jury. First, there is nothing whatever in the record to suggest that this form of oath was given, and the State has never before suggested, in over four years of litigation, that it was. Second, the giving of such an oath is obviously irrelevant. Presumably, oaths of this general type

were taken by the jurors in the Irvin case, the Cassell case, and in the several other jury-fairness cases which have been decided by this Court. (The oath in question, incidentally, does not preclude the jurors from indicting on the basis of prejudgment of guilt.) In any event, if the taking of an oath were thought to be decisive of the issue, no case of this general nature would be reviewed by this Court.

It is contended that "news coverage can do no more than establish a 'mere opportunity' for bias" (Br. 41). This statement flies in the face of several prior holdings of this Court cited above. The fact is that publicity can, and in this case did, establish a public atmosphere of bias going far beyond the "mere opportunity" stage. It is hard to imagine a clearer example of intense and universal community hostility than that which has been shown here.

At Br. 41-42, respondent describes the presiding judge's address to the grand jury as "a brief objective explanation to the grand jury of the nature of the inquiry they should conduct." This "explanation" consisted of the following:

"We come now to the purpose of this grand jury and the reasons which the judges of this Court thought sufficient to justify the expense to the county, and the inconvenience to and sacrifice by you, which this grand jury session

will require.

"It seems unnecessary to review the recent testimony before a Senate Investigating Committee except to say that disclosures have been made indicating that differs of the Teamsters union have, through trick and device, embezzled or stolen frundreds of thousands of dollars of the funds of that union—money which

had come to the union from the dues of its members. It has been alleged that many of these transactions, through which the money was siphoned out of the union treasury, occurred in King County. Such crimes, if committed, cannot be punished under Federal Law, or under any law other than that of the State of Washington, and prosecution must take place in King County. The necessary criminal charges can only be brought in this county upon indictment by the grand jury or information filed by the prosecuting attorney.

"The president of the Teamsters Union has publicly declared the money he received from the union was a loan which he has repaid. This presents a question of fact, the truth of which is for you to ascertain." (R. 329-33)

These references to the testimony before the Senate Committee, to an alleged public declaration that the money was a loan (which declaration petitioner never made as to the funds here involved), and to the "necessary criminal charges", cannot be called "objective"; they were, in fact, an incitement to indict.

At Br. 4-5, the State points out that three prospective grand jurors (not five as claimed) were asked if they were conscious of any bias arising out of their labor union connections. The two others cited by the State were asked only if jury service might "embarrass them". Certainly respondent cannot honestly argue that this inquiry, limited as it was to three panelists who were labor union members, in any way negates the bias and prejudice of the grand jury. No inquiry whatever was made of any of the other jurors. Worse yet, the jury was not even instructed to try to act impartially. The judge's last words to them were those quoted above.

which virtually amounted to a request that petitioner be indicted. And lest any juror have doubt as to who was president of the Teamsters Union, the judge referred to him by name:

"You are not acquainted with . . . Mr. Beck?" (R. 324)

In no case of this type is direct evidence of prejudice available to the defendant. Petitioner, had no chance to conduct any voir dire examination of the grand jurors. The latter are prohibited by statute (RCW 10.28.100) from stating or testifying to the opinions expressed by any of them during their sessions. In this case as in others which this Court has decided, the showing has been made on the basis of obvious and intense community hostility, coupled here with the shockingly unjudicial manner of convening, instructing and conducting the grand jury.

At Br. 16, the State sets forth a lengthy summary of the testimony of Fred Verschueren, Jr. before the grand jury. The apparent purpose of this is to convince the Court (as the prosecutor convinced the grand jury) that the witness was not telling the truth. Improving upon the statement of one judge below that the handling of Verschueren was "a little harsh", the State concedes that it was "very harsh" (Br. 44). In fact, the handling of this witness by the prosecutor was of an extreme viciousness which flouted the most rudimentary concepts of fairness and decency. The transcript of this interrogation is appended to one of the opinions of the court below (R. 887-895), and is also reproduced in the appendix to the petition for

Gompare Faller v. State, 37 So. 749 (Miss. 1905), where a closely similar inquiry—"Have you ever heard of Charlie Fuller?"—was held to require quashing of the indictment.

certiorari. The witness was threatened with prosecution for perjury and with imprisonment, and the jurors were virtually instructed not to believe him. The effects of this total disregard for fairness reached through the trial: the witness was brutalised and intimidated to the point where he could not be called. And as the State correctly implies in its brief, had the grand jurors believed Verschueren—a choice which they had the right to make themselves without intimidation by the prosecutors—the indictment in all probability would not have been returned.

The respondent has made no substantial argument in support of its bare assertion that bias and prejudice have not been shown.

CONCLUSION

The State's argument rests entirely upon meaningless formalities and does not reach the serious issues here involved. This case is concerned with what the late Mr. Justice Jackson rightly called "one of the worst menaces to American justice." The power of modern mass media of communication to discredit and destroy an individual is immense. Where there is added to it the power of a Senate investigating committee—with its inquisitorial methods, its ready alteration between interrogation and denunciation, its willingness to conduct televised hearings—the combined effect is well nigh incalculable.

There can be no doubt that a principal purpose of the Senate hearings was to destroy and discredit

Concurring in Shepard v. Florida, 341 U.S. 50 (1951).

petitioner.' There was in truth no real effort to elicit information from him. As the committee chairman pointed out, the questioning was allowed to continue for day after day in the face of a full invocation of the Fifth Amendment for the sole purpose of exposing petitioner's alleged misconduct and claim of privilege to the American people (see Hearings, op. cit. supra note 4). And as the committee counsel has written, referring to the time of petitioner's second compulsory appearance before the committee on May 16, 1957, which in turn was four days before the grand jury convened:

"Now he was dead, although still standing. All that was needed was someone to push him over and make him lie down as dead men should."

Perhaps such committee activity is praiseworthy. But even if it is, it cannot justify the State of Washington in convicting petitioner and sentencing him to prison without due process or equal protection of law. It may be well enough for Senator McClellan to announce that petitioner had "committed many criminal offenses" (R. 656). It is another matter entirely for the presiding judge below to make what amounted to the same announcement to the grand jurors—i.e., to direct their attention to the testimony before the committee that hundreds of thousands of dollars had been embessed or stolen from the Teamsters Union, to say that petitioner's claim that he had borrowed the money presented a question of fact for them, to say that the "necessary

This is made clear by many statements of committee members reproduced in the vertices transcript of the bearings, which has been published in full under the title Hearings Defore the Select Committee on Improper Activities in the Labor or Management Field, Eighty-Fifth Congress, Pirst Session (U.S. Gov't. Printing Office).

⁵ Robert F. Kennedy, The Exemy Within (Harper & Brothers, 1960), p. 35.

criminal charges" could only be brought in King County, to make no inquiry as to their prejudice, and to fail even to instruct them to act impartially. It may be well enough for a committee counsel to express doubts as to a witness' credibility or attack him for invoking the Fifth Amendment. It is a different matter where, as here, the prosecutors in a judicial proceeding attack a witness before the grand jury by the atening him with prosecution and imprisonment for perjury, announcing that no one in the room believes him, and deliberately inflaming the grand jurors against him and the defendant. It may be desirable for the public to be persuaded by the government and by the news media that a person is guilty of many crimes. It is another matter for that person to be forced to trial before a jury which has been recently saturated with such publicity to an extent that they cannot be but biased.

This petitioner was deprived of his constitutional rights to a fair grand jury and a fair petit jury. As four of the eight judges below stated:

"... it would be unrealistic to believe that a very substantial number of the citizens of the community had not adopted, consciously or unconsciously, an attitude of bias and prejudice toward appellant at the time the grand jury was convened. If ever there was a case which required the most stringent observance of every safeguard known to the law to protect a citizen against bias and prejudice, this was it." (R. 867)

There was no substantial change between indictment and trial. The denunciation and adverse publicity continued. Yet the state court observed no "safeguards" whatever to preserve petitioner's

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constitutional rights in the face of unmistakable hostility and prejudice. On the contrary, at every point—from the presiding judge's address to the grand jury to the trial judge's refusal, 141 days later, to recognize the obvious fact that community prejudice was still rampant—the court served only to hasten and worsen the denial of petitioner's rights under the Fourteenth Amendment.

No argument is made here as to the propriety or fairness of petitioner's destruction as a public figure at the hands of the legislative committee. But it is submitted that this conviction, which is a fruit of the same tree and which was procured by unconstitutional means from beginning to end, must be reversed.

Respectfully submitted, CHARLES S. BURDELL JOHN J. KNOUGH

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JUN 8 1962

JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

October Term, 1961

DAVID D. BECK,

Petitioner,

VS.

STATE OF WASHINGTON,

Respondent.

PETITION FOR REHEARING

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In the Supreme Court of the United States

October Term, 1961

DAVID D. BECK,

Petitioner,

VS.

STATE OF WASHINGTON,

Respondent.

PETITION FOR REHEARING

David D. Beck hereby petitions this Court for a rehearing in the above entitled case,

OR in the alternative, petitions that the case be returned to the Supreme Court of the State of Washington for determination by that Court whether petitioner raised the question of equal protection in the courts of that State;

OR, in the alternative, that the case be returned to the Supreme Court of the State of Washington to determine whether the four judges who urged that the indictment be dismissed were in agreement with the other four judges on the question of denial of petitioner's Motion for Continuance and Change of Venue.

The grounds for this petition are:

1. This Court—and not the Courts of the State of of Washington—has denied to petitioner the equal pro-

tection of law and has adopted a rule which will deny equal protection of law to others similarly situated.

- A. The rule adopted by the Court denies equal protection in grand jury proceedings to persons not held in custody; and the Court's decision of this point will affect not only criminal procedure in the State of Washington but in other States which have statutes and rules similar to the Revised Code of Washington, § 10.28.030.
- B. It is incontrovertible that this highly significant point was raised in the Courts of Washngton as well as in this Court. (Quotations from Briefs and Opinions are set forth in the Appendix hereto). The question of equal protection was raised in the Petition for Certiorari herein and was argued at length in Petitioner's Brief; and the fact that this point was raised was never questioned (and in fact was conceded) so that petitioner has had no opportunity to demonstrate to this Court that the point was raised in the Washington Courts as well as in this court.
- 2. The conduct of the prosecuting attorneys in the grand jury proceedings should have been considered in the aspect of its probable effect upon the grand jury appraisal of witnesses, rather than with reference merely to whether a witness changed his testimony.
- 3. The Court's conclusion that petitioner received a trial by a impartial petit jury is based upon erroneous facts and a misconception of the attitude of four members of the Supreme Court of the State of Washington.

DISCUSSION

Denial of Equal Protection to Petitioner by Decision of this Court.

In the State of Washington prior to the decision of the Court:

- A. A person in custody was entitled to be present at the impanelment of a grand jury and interrogate prospective grand jurors or suggest questions for interrogation, and challenge individual grand jurors for bias or prejudice. RCW §10.28.030.
- B. A person not in custody was entitled to have the trial court exercise its opinion at the time of impanelment of the grand jury concerning the state of mind of the prospective grand juror. RCW §10.28.030.
- C. With respect to persons not in custody it was the responsibility of the trial court to insure that impartial jurors were secured. State v. Guthrie, 185 Wash. 464, 56 P. 2d 160; RCW §4.04.010.

The 4-4 opinions of the State of Washington did not change the law, but left petitioner convicted without a determination, by either of the above methods, that the grand jurors were unbiased.

In the State of Washington, under the decision of this Court petitioner was denied equal protection on the theory that:

- A. One in custody still has the right to attend grand jury proceedings and interrogate prospective grand jurors or submit questions for interrogation and to interpose challenges for bias. RCW §10.28.030.
 - B. But with respect to persons not in custody the

principle so firmly and expressly ennunciated in Guthrie is no longer applicable and,

- It is no longer the duty of the trial court to insure that unbiased and impartial grand jurors will be secured.
- 2. One not in custody has the burden of proving by a demonstrable reality that one or more of the grand jurors were prejudiced against him, despite the fact that he was not present at the impanelment and had no notice of the time and place thereof, and is not entitled to the grand jury transcript, and is not entitled to interrogate members of the grand jury either before or after the deliberations of the grand jury. RCW §10.28.100.
- 3. Where, as to persons not in custody, the trial court fails to make a determination as to bias and prejudice either at the time of impanelment of the grand jury or thereafter upon motion to dismiss, this Court years later and in a different atmosphere can make such a determination (basing its decision upon such things as the occupation of the grand jurors), whereas, as to persons in custody, such a decision is required to be based upon the opinion of the trial court at the time of impanelment of the grand jury. RCW §10.28.030.

The Appendix to this Petition includes quoted material from the Record which demonstrates that this question was raised and considered in the courts of the State of Washington.

Conduct of Prosecuting Attorneys in Grand Jury Proceedings.

Assuming that it is a matter of any concern to the court, this is not a case where the record clearly shows the guilt of the defendant and reversal is sought purely on technical grounds.

In this case, one who reads the records of the grand jury proceedings and trial proceedings will at once perceive that the conviction, aside from procedural error, was based upon tenuous facts and if the matter be approached realistically that the petitioner was probably innocent.

It is manifest that he had nothing to do with the sale of the automobile, that he was out of the City at the time, and that the funds were erroneously deposited in his bank account. The grand jury witness who was mistreated by the prosecutors testified that petitioner had returned to the union a sum in excess of the amount involved in the sales transaction (as well as that involved in other transactions) and that the money was kept in a safe deposit box to which petitioner had no access. When called upon to do so, the witness produced the money. Another witness testified at the trial that prior to the indictment he had examined the safe deposit box and had seen a large amount of currency in the box.

Petitioner, at the trial, did not testify with respect to this matter. It must be apparent that had he done so, violations of other statutes, such as the Labor-Management Relations Act, on the part of the union might have been disclosed, but such conduct does not constitute embezzlement.

Under these circumstances it was vital that the prosecutors not interfere with the function of the grand jury. It was the grand jury's function and theirs alone, to assess the credibility of the witnesses. Who can say whether, absent the interference of the prosecutors, the grand jury would not

have believed the witness? If they had believed the witness there would have been no indictment and no conviction.

The question of the conduct of the prosecutors should be viewed not from the point of view of whether the witness "stuck to his story" but from the point of view of whether the assertions of the prosecutors concerning the credibility of his testimony might have influenced the grand jury.

Misconduct of a prosecuting officer is most certainly a matter within the purview of the due process laws of the Fourteenth Amendment. Mooney v. Holohan, 294 U.S. 103 (1935). The conduct of the prosecutors in this case would surely have been condemned in the presence of a court. We submit that it should not be countenanced merely because it occurred in the secrecy of the grand jury room.

The decision of the Court on this point not only has resulted in a indictment of a man who was probably innocent but establishes dangerous standards of conduct for further cases in State proceedings.

COMBINED EFFECTS OF ERRORS IN GRAND JURY PROCEDURE

This Court has treated each of the petitioner's contentions concerning the grand jury procedure as if it were one single contention of error, without relationship to the additional contentions of error, despite the fact that the questions certified contain related subheadings (see Petition for Writ of Certiorari, p. 4-7). It is Petitioner's contention that the alleged error in the grand jury impanelment and proceedings should be considered in the light of their total effect or potential danger, just as a conspiracy must be viewed in its entirety and not by an examination of its separate parts. See Swift & Co. v. United States, 196 U. S. 375 (1904).

Thus, in this case, the decision as to whether the grand jury was a valid accusatory body should be made not solely upon the question of whether the grand jury consisted of persons of diverse occupations, or solely upon the question of whether the conduct of the prosecutors did not cause a witness to change his testimony. The real question is: was the grand jury a valid accusatory body in view of the combined facts that (1) it was subjected to unprecedented hostile publicity against petitioner, to the degree that realism compels at least some presumption of bias; (2) no attempt was made by the trial court to determine the effect of the publicity, despite its obligation to do so under existing Washington law; (3) reference was made by the

[&]quot;The suggestion by this Court that a direction by the trial court to disregard petitioner's claim of privilege would have added "fuel to the flames" establishes an incorrect principle. Such directions are the best and only remedy which the law provides when inadmissible facts reach the knowledge of the fact-finding body.

trial court to accusations made by a Senate Committee; (4) there was co-operation between representatives of the Senate Committee and the prosecuting officials; (5) and there was misconduct on the part of the prosecutors, possibly inadvertent or resulting from irritation,, which was calculated to destroy the credibility of a witness whose testimony, if believed by the grand jury, would have completely exculpated petitioner.

It is the combined effect of this and other conduct of which petitioner complains, and it is for these reasons that we submit that the Court should have decided the certified question which it did not decide—namely, whether petitioner was entitled to a fair grand jury. If petitioner was entitled to a fair grand jury, the determination of this question would clearly have to be based upon a consideration of the potential effect of all of the grand jury proceedings considered together. The Court did not treat the problem in this manner.

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CERTIFICATE

The undersigned, an attorney of this Court, hereby certifys that this PETITION FOR RE-HEARING is based upon reasonable grounds and is not interposed for the purpose of delay.

CHARLES S. BURDELL

JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

October Term, 1961

DAVID D. BECK,

Petitioner,

VS.

STATE OF WASHINGTON,

Respondent.

APPENDIX TO PETITION FOR REHEARING

(Including quotations from Record relative to question of equal protection)

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The procedures used in this case, and approved by this Court, provide a ready and unnecessary vehicle for the indictment and conviction of an innocent man.

None of the procedures which petitioner claims should have been followed could hamper in the least way the indictment and conviction of a guilty man. Equal Protection was Raised in Courts in the State of Washington.

TRIAL COURT PROCEEDINGS

Petitioner was not in custody at the time of the grand jury impanelment and had no notice of the time and place thereof or the instructions which the trial court proposed to give to the grand jury or the questions which it proposed to ask.

After the indictment, petitioner filed a "Challenge To Grand Jury" (R.12) framed in the language of RCW §10.28.030. The trial court recognized this challenge as being based upon the aforesaid statute and denied the challenge (R.17) stating (St. Vol. XI, p. 2501):

"... under our statute that challenge must be made in certain ways by certain individuals at the outset and ... a challenge to the Grand Jury at this date is not timely. It comes too late and it comes by a person who at no time had a right to challenge the Grand Jury panel as such ..."

It may be that the above statement of the trial court is the one referred to by this Court (Slip Op. 10) as having been "brought home" to petitioner in the course of the trial court proceedings. But the trial court also stated at this point that petitioner did have a right to attack the grand jury panel "on a motion to set aside the indictment". (St. Vol. XI, p. 2501).

This is exactly what petitioner did, in his Motion to Set Aside and Dismiss the Indictment (R.10). Neither the trial court nor any other court ever denied petitioner's right to raise the question of

bias and prejudice of the grand jurors upon such Motion. This is the proper way to raise this point where a statute does not permit a challenge by persons not in custody at the time of impanelment of the grand jury. See Crowley v. United States, 194 U.S. 461; United States v. Agnew, 6 F.R.D. 566 (D.C. Pa. 1947); Reece v. State of Georgia, 360 U.S. 943 (1956); and see cases at p. 44-45 of petitioner's brief in this Court.

Petitioner argued that under the due process laws of the Fourteenth Amendment everyone those not in custody as well as those in custodyhad a right to impanelment of a grand jury by methods which would insure that unbiased grand jurors were secured. Petitioner based his argument upon (1) the common law; (2) RCW §4.04.01, which provides that the common law shall be the rule of decision in the State of Washington, where not inconsistent with the laws of the state; (3) RCW §10.28.030, as stating the intent of the legislature that all persons were entitled to an unbiased grand jury; (4) the decisions of State ex rel Murphy v. Superior Court, 82 Wash. 284, 144 Pac. 32 and State v. Guthrie, 185 Wash. 464, 56 Pac. 2d 160; (5) RCW §10.40.070 which provides grounds upon which an indictment must be dismissed, including the ground that the grand jury was not selected, drawn, or impaneled as prescribed by law.

The trial court never held that one not in custody was not entitled to raise the question of bias and prejudice; and the trial court never held that the mental state of a grand jury considering the case of one not in custody should be any different than that of a person in custody. Instead, the trial court

took the view (1) that no one was entitled to an unbiased grand jury because of the change in the function and purpose of grand juries and (b) bias on the part of the grand juries was irrelevant because under the law of Washington the accusation could just as well have been by information.

The Record in the trial court proceedings is not complete but the reasoning of the trial court and the argument of counsel is clearly demonstrated by the following portions of the Record: St. 1421; St. 1422; St. 1451, 1452; St. 2458; St. 2461-64; St. 2478; St. 2494-95. For the convenience of the Court quotations from these portions of the proceedings are set forth hereinafter at pp. 10A-15A.

Thus the right of petitioner to raise the question of bias or prejudice under RCW 10.40.070 was never denied by the trial court. Nor did the trial court hold that an unbiased grand jury should be provided to a person in custody but not to a person not in custody.

PROCEEDINGS IN THE WASHINGTON SUPREME COURT

The State, in the Supreme Court of the State of Washington, did not contend that the rights of one in custody were any greater than those of one not in custody. It conceded the "well-recognized rule that grand juries should be impartial and unprejudiced . . ." (State Br. 23). It was not contended by the State that this rule was inapplicable to persons not in custody.

And the four members of the Supreme Court who favored affirmance of the conviction based their decision upon grounds which had nothing to do with equal protection. Thus, at the conclusion of the

section relating to the grand jury issue Judge Hill stated: 56 Wn. 2d 474, 484, 349 P. 2d. 387, 393:

"In conclusion, we would emphasize again that the grand jury makes accusations; that it does not determine guilt or innocence. The trial courts then take over, and it becomes the burden of the state to prove the guilt of the person indicted.

"Were we in a jurisdiction in which a grand jury was mandatory, we would be compelled to hold that there had been no violation of the defendant's right to a grand jury in the present case. If we assume, arguendo, that there are sufficient irregularities in the present case to require such a jurisdiction to quash the indictment, then, since there is no constitutional or statutory right to a grand jury in this state, we are unable to understand how such irregularities could be of prejudice to the appellant. We find no violation of appellant's constitutional, statutory, or common-law rights in the present grand jury proceedings."

Although the State had not contended and the trial court had not held that a person in custody had a greater right to a fair grand jury than one not in custody, petitioner nevertheless did emphatically remind the State Supreme Court of his right to equal protection. As this Court says (slip Op. p. 12) his Brief did consist of 125 pages. But much of the brief related to matters other than the grand jury proceedings. The portion of the Brief devoted

Including, for example, the admissibility of certain documentary evidence. The jury, (although untrained in assessing the weight of evidence) was permitted to consider the "weight" against petitioner of documents which were admittedly erroneous and inaccurate, which were not business records and which petitioner had never seen or heard of and concerning which he gave no directions or instructions (App. Br. in Washington Supreme Court, p. 89 - 99). Many other

to petitioner's right to an impartial and unbiased grand jury commenced at page 34 and continued to page 45. At page 36 petitioner argued that at common law a grand jury must be impartial, and at pages 37-38, petitioner argued that the common law rule was applicable in Washington, to everyone, because of RCW 9.01.150 and RCW 40.28.030. At page 40, petitioner quoted from State ex rel Murphy v. Superior Ct., 82 Wash. 284, 144 P. 32, a case which held that impartial grand jurors should be provided in a case in which the accused was not in custody. Finally, commencing at the top of page 44 and continuing until the last four lines of page 45, petitioner specifically argued that it would be a denial of equal protection to apply the provisions of RCW 10.28.030 only to persons in custody.

The Supreme Court of the State of Washington most certainly read these portions of the brief. Both Judge Hill and Judge Donworth plainly, clearly, and specifically, discussed the application of RCW §10.28.030 from the point of view of equal protection. In the Opinion of Judge Hill it was stated: (56 Wn. 2d 474, 480, 349 P. 2d 387, 391)

"To summarize this phase of the case:

"1. We are unable to conclude that because a statute gave 'any person in custody or held to answer for an offense' the right to challenge a grand juror for prejudice, there is a statutory or any other requirement that grand jurors be without bias or prejudice against any one indicted by

points were raised, all relating to State procedures other than the grand jury issue. Perhaps the most serious points were those which related to the continued misconduct, at the trial, of the prosecutor (no longer participating in this case) whose conduct in the grand jury proceedings is here challenged (App. Br. p. 83 - 86, 109).

them, except the persons for whose benefit that statute was enacted.

"2. That, absent such statutory requirement, bias or prejudice on the part of one or more of the grand jurors is not a ground for setting aside a judgment based on a verdict of guilty returned by a petit jury."

And Judge Donworth stated: (56 Wn. 2d 474, 527, 349 P. 2d 387, 417)

"Before concluding this dissent, I wish to briefly notice certain statements contained in the majority opinion. The majority takes the position that the only statutory provision that grand jurors in this state are required to be impartial and unprejudiced is found in RCW 10.28.010 and RCW 10.28.030, and that these provisions apply only to person already in custody or held to answer for an offense. The majority opinion then states:

"There was a reason for such a challenge by a 'person in custody or held to answer for an offense', but the appellant was not such a person." (Italics mine.)

"It seems to me that the only reason the legislature granted to a person in custody or held to answer for an offense the right to be investigated by an impartial and unprejudiced grand jury, is that the grand jury's attention had been focused upon him from the commencement of its investigation. That is precisely the situation of appellant here. There could not be any doubt in the minds of the prospective jurors that this grand jury had been convened to investigate appellant."

Additional portions of the opinions relating to this point are quoted hereinafter at pp. 20A-23A.

PROCEEDINGS IN THIS COURT

It is said that the certified questions did not properly bring to this Court the question of equal protection (Slip Op. p. 13). The petitioner's principal argument in the courts of the State of Washington, and in this Court, was that since petitioner was not in custody it was the duty of the trial court to take steps to insure the selection of an unbiased grand jury. Petitioner, in Washington and in this Court, relied upon authorities which specifically discussed the right of one not in custody to challenge the qualifications of grand jurors and which held that such right could not be denied to any person by virtue of a statute which provided for challenges by a person in custody. (See petitioner's Brief in the Supreme Court of the State of Washington, page 40, 45; and petitioner's Brief in this Court, pages 44-46, 49). Petitioner relied strongly upon State v. Guthrie, 185 Wash. 64, 56 P.2nd 160, and repeatedly quoted the section which referred to RCW 10.28.030 but which went on to say that the policy of the law "charges the court with the responsibility of insuring that qualified and impartial grand jurors are secured."

This contention, which most certainly relates to equal protection, is, we submit, clearly embraced by question 1.(a). That question submits to this Court the question of whether petitioner had

". . . . a right under the due process and equal protection clauses of the Fourteenth Amendment to have the grand jury impaneled in a manner which would prevent or at least tend to prevent the selection of biased and prejudiced grand jurors?

"The judgment of the Supreme Court of

the State of Washington holds that neither petitioner nor any other person has this right."

The question of equal protection was thoroughly and specifically argued in petitioner's Brief in this Court, and the question was also raised in oral argument. Nevertheless, although it was clear that this Court had read the Briefs in the case, none of the Justices suggested at any time that the question of equal protection was not properly before the Court. And the State never argued, either in its Brief or oral argument, that the question was not properly before the Court.

Moreover, it is apparently agreed that the question of due process is properly before the Court; and the definition and concept of due process under the Fourteenth Amendment embraces and includes the right of equal protection. This is clear from Griffin v. Illinois, 351 U.S. 12 (1956). That case involved a question of equal protection (in the sense in which that term is used in the Opinion in the case at bar) but the decision demonstrates that the concept of equal protection which is involved in the present case is included in the concept of due process. In that case Mr. Justice Black stated (in an opinion in which Mr. Justice Douglas and Mr. Justice Clark joined) (351 U.S. 12, 17-18):

"Both equal protection and due process emphasize the central aim of our entire judicial system—all people charged with crime, so far as the law is concerned, 'stand on an equality before the bar of justice in every American court.' Chambers v. Florida, 309 U.S. 227, 241, 84 L. ed. 716, 724, 60 S Ct. 472

Appellate review has now become an integral

part of the Illinois trial system for finally adjudicating the guilt or innocence of a defendant. Consequently at all stages of the proceedings the Due Process and Equal Protection Clauses protect persons like petitioners from invidious discriminations. See Gole v. Arkansas, 333 U.S. 196, 201, 92 L. ed. 644, 647, 68 S Ct. 514; Dowd v. United States, 340 U.S. 206, 208, 95 L. ed. 215, 218, 71 S Ct. 262, 19 ALR 2d 784; Cochran v. Kansas, 316 U.S. 255, 257, 86 L. ed. 1453, 1454, 62 S Ct. 1068; Frank v. Mangum, 237 U.S. 309, 327, 59 L. ed. 969, 980, 35 S Ct. 582."

EXCERPTS FROM PROCEEDINGS IN THE COURTS OF WASHINGTON

From Proceedings in the Trial Court
[Counsel for petitioner]
St. 2461-2464.

I find nothing in any of the cases or any of the Washington cases, which could possibly be construed as meaning that this constitutional provision applies only to trial juries as distinguished from Grand Juries. It seems to me it is a flat constitutional provision imposing the rule that judges shall not charge jurors with respect to any matters of fact and then turning to RCW 10.28.030 which relates to challenge of Grand Jurors and which is probably applicable insofar as it expresses the intent of the Legislature, I don't contend that it provides that an indictment should be dismissed but it does express the intent of the Legislature. It says:

"Challenges to individual Grand Jurors may be made by such person for reason of want of qualification to sit as such juror; and when, in the opinion of the Court, a state of mind exists in the jurors, such as would render him unable to act impartially and without prejudice."

Now RCW 10.40.070 provides that a motion to set aside an indictment, which is what we have here, must be sustained if the Grand Jury was not selected, drawn, summoned, impaneled, or sworn as prescribed by law. It is our contention that the Grand Jury was not selected or sworn or impaneled as required by law because there was no determination by the Court, no interrogation by the Court

designed to enable anyone to determine whether or not a state of mind existed in the minds of any juror which would render him unable to act impartially and without prejudice.

As the Court knows, to that we do add the contention that certain of the Court's comments with respect to the Senate hearing just emphasized the prejudice which might have existed in the minds of the jurors at the time of the impanelment. Indeed, I went so tar as to suggest that in my memorandum if the Grand Jurors were not prejudiced in the beginning they were prejudiced at the conclusion of the impanelment. Of course I understand that I wasn't here making this argument at the time of the impanelment and if it was erroneous, it was inadvertent. There is no question about that.

Now the decision while in the State of Washington there are none quite as much in point as in some of the other states, nevertheless the decisions which we have been able to find all indicate the same thing. That is, that the Grand Jury just like the trial jury, must be unbiased and unprejudiced, and indeed in a couple of the decisions they referred to this 10.28.030 in the same manner I have done to indicate the intent of the Legislature. The first case we have found was in 1 Washington Territory reports where they overruled a challenge to some Grand Jury proceedings, but in doing so they pointed out that the defendant has contended as we do here, that any of the Grand Jurors had any prejudice or bias, that contention was not made. That is the first case, that of course is the first case that is reported that has any reference to this question of bias or prejudice with respect to Grand Juries.

The next one, 82 Washington 284 on Page 25, the Murphy case, where the Court was discussing the right of the trial court, that is, the Supreme Court was discussing the right of the trial court to excuse certain prospective grand jurors, and the Supreme Court held that it was all right, it was correct for the trial court to excuse the prospective jurors. Then the court said this about the policy of our Legislature with respect to grand juries. They say:

"That it was the policy of the Legislature to preserve the right to have an unbiased and unprejudiced jury and grand jury, and that no suspicion should attach to the manner of its selection in all cases, cannot be questioned."

Now it seems to me that is pretty strong language and then in the later case of State v. Guthrie, the same problem arose again involving a situation where the court had excused some grand jurors. The court held that it was proper for the trial court to excuse the grand jurors. The Supreme Court said this:

"To deny this right would be out of harmony with the policy of the law, which charges the court with responsibility of insuring that qualified and impartial grand jurors are secured."

We have checked the other states, and incidentally I find a lot of this in some of the text books, I find language which says and indicates that in many cases grand jurors may be biased without error, but in all of the cases where we have been able to find statutes, anything at all like ours, the courts have definitely taken the position that the grand jury must be impartial and must be unbiased.

St. 2478

THE COURT: Well, I just merely mention that because we might, I think, reminisce just a little. I think two grand-juries ago there was an indictment returned against the employee of the county commissioners, I think John C. Stevens, and some employee of his was indicted and the information was attacked in court. I believe Judge Agnew was then a deputy prosecutor, or in charge of that, and I think he dismissed the indictment and filed an information wherein all the arguments which had been amassed against the indictment was thrown out the window and went ahead on the information.

[Counsel for Petitioner]

St. 1421

Now, with that background we face the situation where we are told that it doesn't make any difference if the grand jury is prejudiced, the prosecutor could have returned an information and the prosecutor might have been prejudiced if there had been no grand jury so it doesn't make any difference so of course that argument simply won't work because we have statutory procedures for determining the method of empaneling a grand jury and the method of filing an information and if the prosecutor or the County or State selects one method, surely it must adhere to the statute relating to the one which it selects.

St. 2458

I think we discussed it very casually at the time we argued the motion for the transcript of the testimony of the Grand Jury. As I recall, the Court at that time took the position or seemed to feel, I think it was expressed in support of a casual remark, that under our rule there was no requirement that a Grand Jury be unbiased or impartial or unprejudiced. I suppose the Court had in mind the presumption of innocence which prevails at the time of the trial and the theory that even if the Grand Jury was biased it does not make any difference because the defendants are protected by the presumption of innocence and by instructions regarding the fact that the indictment is only a charge, and things of that sort.

St. 1451-1452

Again getting back to this question of the validity of a grand jury and the necessity of a valid grand jury under the Fourteenth Amendment, I should also have brought to the court's attention the case of Rees v. Georgia, which is in 350 U.S., and I don't recall the page number, but it is a decision which involved a grand jury from which Negroes were excluded and the Supreme Court of the State of Georgia held this was proper and in accordance with their judicial system. The Supreme Court of the United States held that it was not proper because it violated one of the first eight amendments and thereby violated the Fourteenth Amendment and that the indictment was in effect a nullity, or the grand jury was in effect a nullity and thereby the indictment was a nullity. I might also point out that our statute in the State of Washington provides that where a grand jury is improperly empaneled or sworn or instructed, then under our statute the indictment must be set aside. The statute uses the words, "must be set aside." It

doesn't give to the courts any discretion whatsoever.

St. 1422

It is not proper and it is not fair to say, well, it doesn't make any difference if you have an impartial grand jury because you can still have a trial, because the fact is after an indictment the trial may take a completely different complexion than it would after a return of an information, aside from the fact that if we have statutes, of course, presumably we are to adhere to them.

Then we get to the situation where we have an indictment returned by a grand jury who was possibly or I will say presumably biased, with alleged and at this point undenied inflammatory conduct by the prosecuting attorney, and finally in addition to that, a grand jury which was instructed in what is almost inflammatory language, and we are told, as I say, it doesn't make any difference. You can obtain a trial before a judge.

From Brief of Potitioner in the Supreme Court of the State of Washington, p. 37-45.

The statutes of the State of Washington relating to Grand Juries expressly demonstrate the legislative intent to adopt the Common law principle that grand juries must be impartial and unprejudiced. Thus, R.C.W. 10.28.030 provides that a grand juror may be challenged:

... when, in the opinion of the court, a state of mind exists in the juror, such as would render him unable to act impartially and without prejudice.

The foregoing statute was originally enacted as a part of the Code of 1881. Section 1 of this Code, (R.C.W. 9.01.150), provides that common law principles relating to the punishment of crime should be applied unless they were "inconsistent" with the Code. Subsequently, no statute relating to Grand Juries has been enacted which is in any way inconsistent with the common law principle that grand juries must be impartial, and no statute has been passed which in any way modifies the same principle as expressed in R.C.W. 10.28.030. In fact it is a crime for a grand juror challenged for bias to in any way participate in the consideration of the person against whom he is biased, R.C.W. 9.51.040.

Similarly, all of the decisions of this Court relating to the selection of grand jurors recognize and apply the identical principle. In the case of Watts v. Washington Territory, 1 Wash. Terr. 409, the Court overruled a challenge to grand jury proceedings, but in doing so, pointed out that there was no claim by the defendant that any of the grand jurors

From Brief of Petitioner in the Supreme Court of the State of Washington, p. 37-45.

"had any prejudice or bias against him." (page

412).

And in State ex rel Murphy v. Superior Court, 82 Wash. 284, the Court held that it was proper for the Judge to excuse certain prospective jurors, and in so doing, the Court declared (p. 286):

That it was the policy of the legislature to preserve the right to have an unbiased and unprejudiced jury and grand jury, and that no suspicion should attach to the manner of its selection in all cases, cannot be questioned.

In the later decision of State vs. Guthrie, 185 Wash. 464, the Court denied a motion to quash an indictment, but in doing so, cited the Murphy case, 82 Wash. 284, with approval, and discussed R.C.W. 10.28.030 as follows (p. 475):

While this section may be said to relate to challenges made by interested persons, it is not to be construed as denying to the court the right, upon its own motion, to excuse a juror deemed to be disqualified or incompetent. To deny this right would be out of harmony with the policy of the law, which charges the court with the responsibility of insuring that qualified and impartial grand jurors are secured.

Other states, having statutes similar to those applicable in the State of Washington, apply the same rule. Burns International Detective Agency v. Doyle, (Nev. 1922) 208 Pac. 427 is illustrative. In that case a member of a grand jury had employed the plaintiff, a detective agency, to obtain information and report concerning a person under investigation by the grand jury. The Court held that the employment contract was invalid, and in so doing,

From Brief of Petitioner in the Supreme Court of the State of Washington, p. 37-45.

relied upon a statute similar in substance to R.C.W. 10.28.030. The Court declared (p. 428).

If we can accurately divine the purpose of these provisions of our statute, it is to assure persons under investigation the consideration of their case, as far as possible, by those who are in no way biased. Such is the public policy of the state, as definitely established by the statute.

Similarly, in *Maley v. District Court* (Iowa 1936), **266** N.W. 815, the court stated (p. 817):

Another idea that is prevalent through all the cases involving the questions herein involved, is that the grand jury, in its investigation and consideration, is to act alone on the evidence it has before it, and is not to be subject to outside influences.

Similarly, in State v. Johnson (N.D. 1927), 214 N.W. 39, interpreting statutes similar to those applicable in the State of Washington, the court held that an indictment should be dismissed because one grand juror indicated in his voir dire examination that he might be biased. Another recent case which reiterates the principle that grand jurors must be unbiased and unprejudiced is State v. Smith (Okla. 1958) 320 Pac. 2d. 719.

To [the] disregard of the principle that the grand jurors should have been unbiased and unprejudiced, it is not a sufficient answer to argue that R.C.W. 10.28.030 provides only for a challenge to jurors at the time of their impanelment. The right to challenge a grand juror at the time of impanelment is available only to a person who has already been arrested and held to answer; and it has been re-

From Brief of Petitioner in the Supreme Court of the State of Washington, p. 37-45.

peatedly held that a statute which provides for this type of challenge does not vitiate the right to move to dismiss or set aside an indictment which has been found by a grand jury composed in whole or in part of incompetent or disqualified persons. In fact, to permit one who has already been arrested to challenge the mental qualifications of a grand juror, while denying this right to one who has not been arrested, would amount to a denial of equal protection of the law. This is particularly true where, in the state of Washington, common law principles concerning grand juries are specifically preserved and where, in fact, R.C.W. 10.40.070 provides that an indictment must be set aside where the grand jury has been improperly selected and impaneled. Thus, in the following cases, it has been held-that a statute relating to challenges to grand jurors at the time of impanelment constitutes no bar to an attack upon an indictment by motion to dismiss and set aside, or by motion to quash. State v. Smith (Okla. 1958) 320 P. (2d) 719; Crowley v. United States, 194 U.S. 461 (1904); Hardin v. State, 22 Ind. 347 (1864); United States v. Blodgett, 30 Fed. Cas. 1157, No. 18312 (D.C. Ga. 1867); McQuillen v. State, 8 Smedes & M. 587 (Miss. 1847); see also 2 Hills Annotated Statutes and Codes of Washington, Sec. 1205 (1891).

From opinion of Judge Hill, in State v. Beck, 56 Wn. 2d 474, 479, 349 P.2d 387, 390

However, the premise is not correct unless, as the appellant urges our 1854 grand jury statute requires that grand jurors be impartial and unprejudiced. The only support for the suggestion that there is such a statutory requirement is contained in one section which relates to the long-gone situation where a grand jury met for the purpose of considering whether persons then in custody or released on bail and "held to answer for an offense" should be indicted or released. Such a person might challenge the panel because it was not drawn properly (RCW 10.28.010), or might challenge individual grand jurors

"... for reason of want of qualification to sit as such juror; and when, in the opinion of the court, a state of mind exists in the juror, such as would render him unable to act impartially and without prejudice." RCW 10.28.030.

There was a reason for such a challenge by a "person in custody or held to answer for an offense," but the appellant was not such a person. When a modern grand jury starts its investigative process it seems ridiculous to suggest that as each new personality comes under scrutiny the proceedings must stop until it can be determined whether any member of the grand jury is biased or prejudiced against him; and, if a grand juror is so biased or prejudiced, the investigation is at an end. Such a situation was not contemplated, even in territorial days, for our statute provides that a grand juror must testify of his own knowledge of offenses committed, and this testimony may initiate such investigation as would lead to an indictment. RCW 10.28.130. A grand

From opinion of Judge Hill, in State v. Beck, 56 Wn. 2d 474, 479, 349 P.2d 387, 390

juror so testifying is disqualified from joining in the deliberations and voting. RCW 10.28.140. Both sections assume that a grand juror so testifying is properly a member of the panel, and, as stated in Coblenz v. State, supra, any requirement that such grand juror be completely unprejudiced is inconsistent with his right and obligation to share his information with the grand jury.

To summarize this phase of the case:

- 1. We are unable to conclude that because a statute gave "any person in custody or held to answer for an offense" the right to challenge a grand juror for prejudice, there is a statutory or any other requirement that grand jurors be without bias or prejudice against any one indicted by them, except the persons for whose benefit that statute was enacted.
- 2. That, absent such statutory requirement, bias or prejudice on the part of one or more of the grand jurors is not a ground for setting aside a judgment based on a verdict of guilty returned by a petit jury.

From the opinion of Judge Donworth, in State v. Beck, 56 Wn. 2d 474, 527, 349 P.2d 387, 417

Before concluding this dissent, I wish to briefly notice certain statements contained in the majority opinion. The majority takes the position that the only statutory provision that grand jurors in this state are required to be impartial and unprejudiced is found in RCW 10.28.010 and RCW 10.28.030, and that these provisions apply only to persons already in custody or held to answer for an offense. The majority opinion then states:

"There was a reason for such a challenge by a 'person in custody or held to answer for an offense,' but the appellant was not such a person." (Italics mine.)

It seems to me that the only reason the legislature granted to a person in custody or held to answer for an offense the right to be investigated by an impartial and unprejudiced grand jury, is that the grand jury's attention had been focused upon him from the commencement of its investigation. That is precisely the situation of appellant here. There could not be any doubt in the minds of the prospective jurors that this grand jury had been convened to investigate appellant. As mentioned above, not only did the newspapers announce, less than three weeks before the impanelment, that appellant was to be investigated by the grand jury, but, also, the trial court, in its charge, instructed the grand jury that the president of the teamster's union had publicly stated that the sums received by him from the union (which the Senate Committee stated were stolen) were loans which had been repaid, and that this issue presented a question of fact for the grand jury to resolve.

From the opinion of Judge Donworth, in State v. Beck, 56 Wn. 2d 474, 527, 349 P.2d 387, 417

I do not understand how it can be said, under the facts shown in this record, that the reason entitling a person in custody or held to answer for an offense to be investigated by an impartial and unprejudiced grand jury, does not apply equally well to appellant. It is axiomatic that all men are equal before the law and are entitled to the same rights under the same or similar circumstances.

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SUPREME COURT OF THE UNITED STATES

No. 40.—OCTOBER TERM, .1961.

David D. Beck, Petitioner, v. Washington. On Writ of Certiorari to the Supreme Court of the State of Washington.

[May 14, 1962.]

MR. JUSTICE CLARK delivered the opinion of the Court.

Petitioner David D. Beck contends that his conviction of grand larceny in the Superior Court of the State of Washington for King County is invalid under the Due Process and Equal Protection Clauses of the Fourteenth Amendment. This contention is based primarily on what is characterized as voluminous and continuous adverse publicity circulated by news media in the vicinity of Seattle, Washington, where he was indicted and tried. Specifically he claims, inter alia, that the grand jury was unfairly impaneled and instructed, that the prosecutor acted improperly before the grand jury, and that his motions for a change of venue and for continuances were erroneously denied. The judges of the Supreme Court of Washington divided equally in review, 56 Wash. 2d 474, 349 P. 2d 387, leaving petitioner's conviction undisturbed. We granted certiorari limited to the above contentions. 365 U. S. 866, and we now affirm the conviction.

I. THE PUBLICITY OF WHICH PETITIONER COMPLAINS.

In addition to challenges to the grand and petit juries, petitioner prior to the selection of the petit jury made five motions on the ground of bias and prejudice arising from the publicity, i. e., one to quash the indictment, three for continuances ranging from one month to an

indefinite period, and one for a change of venue to Snohomish or Whatcom County. Petitioner's counsel supported his factual contentions in regard to these various motions by his personal affidavits as well as by photostats of stories appearing in local newspapers and national magazines. We shall now summarize the highlights of the publicity set forth by the petitioner in his moving papers and exhibits.

The Select Committee on Improper Activities in the Labor or Management Field of the United States Senate began its investigation on February 26, 1957. In early March the Chairman of the Committee announced that the Committee had "produced 'rather conclusive' evidence of a tie-up between West Coast Teamsters and underworld bosses to monopolize vice in Portland, Ore." The announcement also stated that "Teamsters' President David Beck and Brewster [also a Teamster leader] will be summoned for questioning on a charge that they schemed to control Oregon's law enforcement machinery from a local level on up to the governor's chair."

On March 22 the Committee was quoted in the newspapers as stating "\$250,000 had been taken from Teamster funds . . . and used for Beck's personal benefit." Petitioner appeared before the Committee on March 26, and the newspapers reported: "BECK TAKES 5TH AMENDMENT President of Teamsters Very Definitely' Thinks Records Might Incriminate Him." Television cameras were permitted at the hearings. One Seattle TV station ran an 8%-hour "live" broadcast of the session on March 27, and films of this session were shown by various TV stations in the Seattle-Tacoma area. The April 12 issue of the U.S. News & World Report ran a caption: "Take a look around Seattle these days, and you find what a Senate inquiry can do to a top labor leader in his own home town." On April 26 the county prosecutor announced that a special grand jury would be

impaneled in Seattle "to investigate possible misuse of Teamsters Union funds by international president Dave Beck " It was later announced that former Mayor Devin of Seattle was to be appointed Chief Special Prosecutor. On May 3 petitioner was indicted by a federal grand jury at Tacoma for income tax evasion. announcement of this action was of course in front-page headlines. Five days later the petitioner was again called as a witness before the Committee in Washington. News stories on his appearance concentrated on his pleading of the Fifth Amendment 60 times during the hearings. Other stories emanating from the Committee hearings were featured intermittently, and on May 20, the day of the convening of the special grand jury, the Chairman of the Senate Committee announced that "the committee has not convicted Mr. Beck of any crime, although it is my belief that he has committed many criminal offenses." The publicity continued to some degree after the grand jury had been convened and during the three-week period in which the prosecutors were gathering up documentary evidence through the use of grand jury subpoenas. Among other stories that appeared was one of June 11 stating that at the Committee hearings "Beck, Jr., who even refused to say whether he knew his father, took shelter behind the [fifth] amendment 130 times, following the example of Beck, Sr., who refused to answer 210 times in three appearances before the committee." The indictment in this case was returned by the special grand jury on July 12 and of course received banner headlines. Intermittent publicity continued, some from Washington, D. C., until August 28 when a federal grand jury indicted petitioner and others on additional income tax evasion counts. The co-conspirators named in this latter indictment were then called before the Committee in Washington, and these hearings, which were held on November 5,

brought on additional publicity. On November 12 Dave Beck, Jr., went to trial on other larceny charges and was convicted on November 23, a Saturday. The state papers gave that event considerable coverage. The trial of petitioner in this case began on December 2 and continued until his conviction on December 14.

II. THE OBJECTIONS TO THE GRAND JURY PROCEEDINGS.

Ever since Hurtado v. California, 110 U.S. 516 (1884). this Court has consistently held that there is no federal constitutional impediment to dispensing entirely with the grand jury in state prosecutions. The State of Washingtop abandoned its mandatory grand jury practice some 50 years ago.1 Since that time prosecutions have been instituted on informations filed by the prosecutor, on many occasions without even a prior judicial determination of "probable cause"-a procedure which has likewise had approval here in such cases as Ocampo v. United States, 234 U.S. 91 (1914), and Lem Woon v. Oregon, 229 U. S. 586 (1913). Grand juries in Washington are convened only on special occasions and for specific purposes. The grand jury in this case, the eighth called in King County in 40 years, was summoned primarily to investigate circumstances which had been the subject of the Senate Committee hearings.

In his attempts before trial to have the indictment set aside petitioner did not contend that any particular grand juror was prejudiced or biased. Rather, he asserted that the judge impaneling the grand jury had breached his duty to ascertain on voir dire whether any prospective juror had been influenced by the adverse publicity and that this error had been compounded by his failure to adequately instruct the grand jury concerning bias and preju-

¹ Washington Laws 1909, c. 87.

dice. It may be that the Due Process Clause of the Fourteenth Amendment requires the State, having once resorted to a grand jury procedure, to furnish an unbiased grand jury. Compare Lawn v. United States, 355 U. S. 339, 349-350 (1958); Costello v. United States, 350 U. S. 359, 363 (1956); Hoffman v. United States, 341 U. S. 479, 485 (1951). But we find that it is not necessary for us to determine this question; for even if due process would require a State to furnish an unbiased body once it resorted to grand jury procedure—a question upon-which we do not remotely intimate any view—we have concluded that Washington, so far as is shown by the record, did so in this case.

Petitioner's appearance before the Senate Committee was current news of high national interest and quite normally was widely publicized throughout the nation, including his home city of Seattle and the State of Washington. His answers to and conduct before the Committee disclosed the possibility that he had committed local offenses within the jurisdiction of King County, Washington, against the laws of that State. In the light of those disclosures the King County authorities were duty-bound to investigate and, if the State's laws had been violated. to prosecute the offenders. It appears that documentary evidence—in the hands of petitioner's union—was necessary to a complete investigation. The only method available to secure such documents was by grand jury process. and it was decided therefore to impanel a grand jury. This Washington was free to do.

Twenty-three prospective grand jurors were called. The trial judge explained, as is customary in such matters, that they had been called primarily to investigate possible crimes committed in King County by officers of the Teamsters Union which had been the subject of the Senate Committee hearings. In impaneling the grand jury the judge, after determining their statutory qualifications,

businesses, union affiliations and the like, asked each of the prospective jurors: "Is there anything about sitting on this grand jury that might embarrass you at all?" answer to this or the question of whether they were conscious of any prejudice or bias, which was asked whenever previous answers suggested a need for further inquiry. two admitted they were prejudiced by the publicity and were excused. Another stated that whether he was prejudiced was "pretty hard to answer," and he, too, was excused. In addition three persons who were or had been members of unions that were affiliated with petitioner's union were excused. The remaining 17 were accepted and sworn as grand jurors and as a part of the oath swore that they would not "present [any] person through envy, hatred or malice." Among them were a retired city employee who had been a Teamster, the manager of a real estate office, a bookkeeper, an engineer, an airplane manufacturer's employee, a seamstress whose husband was a union member, a material inspector, a gravel company superintendent who was a former Teamster Union member, a civil engineer with the State Department of Fisheries, and an engineer for a gyroscope manufacturer.

In his charge to the grand jury the trial judge explained that its "function was to inquire into the commission of crime in the county," that ordinarily this was done "by the regularly established law enforcement agencies," but that this was impossible here because further investigation was necessary requiring the attendance of witnesses and the examination of books and records which a prosecutor had no power to compel. As to the purpose for which it was called he explained that "disclosures" by the Senate Investigating Committee indicated "hundreds of thousands of dollars of the funds" of the Teamsters Union had been "embezzled or stolen" by its officers. He also stated that the president of the Teamsters had "publicly declared" that the money he had received was a loan.

"This presents a question of fact," he added, "the truth of which is for you to ascertain." After mentioning other accusations he concluded, "I urge you to do all that you can within practical limitations to ascertain the truth or falsity of these charges. . . You have a most serious task to perform It is a tremendous responsibility, and I wish you well in your work."

It is true that the judge did not admonish the grand jurors to disregard or disbelieve news reports and publicity concerning petitioner. Nor did he mention or explain the effect of the invocation of the Fifth Amendment by petitioner before the Committee or inquire as to the politics of any panel member. Discussion along such lines might well have added fuel to the flames which some see here. Apparently sensing this dilemma the judge admonished the grand jury that its function was to inquire into the commission of crime in the county and that it was to conduct an examination of witnesses as well as books and records. Twice in his short statement he said that it was for the grand jury to determine whether the charges were true or false. Taking the instructions as a whole, they made manifest that the jurors were to sift the charges by careful investigation, interrogation of witnesses, and examination of records, not by newspaper stories.

In the light of these facts and on the attack made we cannot say that the grand jury was biased. It was chosen from the regular jury list. Some six months thereafter a petit jury to try this case was selected from the same community and, as will hereafter be shown, was not found to be prejudiced. Indeed, every judge who passed on the issue in the State's courts, including its highest court, has so held. A look at the grand jury through the record reveals that it was composed of people from all walks of life, some of whom were former union members. The judge immediately and in the presence of all of the panel eliminated six prospective grand jurors when indications

of prejudice appeared. No grand juror personally knew petitioner or was shown to be adverse to the institutions with which petitioner is generally identified. Every person who was selected on the grand jury took an oath that he would not indict any person through "hatred or malice." Moreover, the grand jury sat for six weeks before any indictment was returned against petitioner. The record also indicates that it heard voluminous testimony on the charges that had been made against petitioner and others and that it gave the matter most meticulous and careful consideration. We therefore conclude that petitioner has failed to show that the body which indicted him was biased or prejudiced against him.

In addition to the above due process contention three equal protection arguments are made by petitioner or suggested on his behalf. First, petitioner argues he is a member of a class (Teamsters) that was not accorded equal treatment in grand jury proceedings. The contention is based on references to the Teamsters by the judge impanching the grand jury as he conducted the voir dire and explained the scope of the investigation. The complete answer to petitioner's argument is that references to the Teamsters were necessary in the voir dire to eliminate persons who might be prejudiced for or against petitioner and in the instructions to explain the purpose and scope of this special body. Petitioner has totally failed to establish that non-Teamsters who are members of groups under investigation are given any different treatment.

Secondly, it is said that the Washington statute permitting persons in custody to challenge grand jurors, Revised Code of Washington § 10.28.030, denies equal protection to persons not in custody who are investigated by grand juries. This point is not properly before this Court. Although both opinions of the Washington Supreme Court discuss the interpretation of § 10.28.030, neither considered that question in light of the equal pro-

tection argument for that argument was never properly presented to the court in relation to this statute. The Washington Supreme Court has unfailingly refused to consider constitutional attacks upon statutes not made in the trial court even where the constitutional claims arise from the trial court's interpretation of the challenged statute. E. g., Johnson v. Seattle, 50 Wash. 2d 543, 313 P. 2d 676 (1957). Petitioner's formal attack at the trial court level did not even mention § 10.28.030 much less argue that a restrictive interpretation would be unconstitutional under the Equal Protection Clause. That the

² Washington v. Griffith, 52 Wash. 2d 721, 328-P. 2d 897 (1958), does not distract from this principle. In Griffith the Washington Supreme Court while recognizing the general rule that constitutional arguments cannot be presented for the first time in the Supreme Court found an exception to this general rule when the accused in a capital case asserts his court-appointed attorney incompetently conducted his trial. The reasons for such an exception are obvious, and it is just as obvious that such reasons are not applicable to the present case.

³ Petitioner made the following attacks upon the grand jury:

[&]quot;Motion to Set Aside and Dismiss Indictment—Filed October 18, 1957

[&]quot;Comes Now David D. Beck, also known as Dave Beck, defendant herein, by and through his attorneys of record herein, and respectfully moves to set aside and dismiss the indictment on the following grounds:

[&]quot;1. That the grand jurors were not selected, drawn, summoned, impaneled or sworn as prescribed by law.

[&]quot;2. That unauthorized persons, not required or permitted by law to attend sessions of the grand jury were present before the grand jury during the investigation of the allegations of the indictment."

[&]quot;3. That persons other than the grand jurors were present before the grand jury during consideration of the matters and things charged in the indictment.

[&]quot;4. That the proceedings of the grand jury which returned the indictment were conducted in an atmosphere of extreme bias, prejudice and hostility toward this defendant, and that said atmosphere

prosecution and the court viewed petitioner as outside the scope of § 10.28.030 was brought home to him in the course of the trial court proceedings on his grand jury attack. But even then petitioner did not suggest that constitu-

was in part created by the Prosecuting Attorney and by persons acting or claiming to act upon his behalf; all of which was prejudicial to this defendant and which has denied and will continue to deny him rights guaranteed under the 14th Amendment of the Constitution of the United States, Amendment 10 of the Constitution of the State of Washington, and Article I, § 3 of the Constitution of the State of Washington.

"5. That by reason of extreme bias, prejudice and hostility toward the defendant herein, contributed to in part by the conduct of the Prosecuting Attorney and persons acting or claiming to act upon his behalf, it is and will be impossible for the defendant to secure and obtain a fair and impartial trial in the jurisdiction of this Court, all of which is and will be prejudicial to this defendant and which will constitute a denial of his rights guaranteed under the 14th Amendment of the Constitution of the United States, Amendment 10 of the Constitution of the State of Washington, and Article 1, \$3 of the Constitution of the State of Washington.

"6. That the Court erred in its instructions and directions to the Grand Jury to the prejudice of the defendant and in denial of rights guaranteed under the 14th Amendment of the Constitution of the United States, Amendment 10 of the Constitution of the State of Washington, and Article I, § 3 of the Constitution of the State of Washington.

"7. That there were excluded from the Grand Jury persons of defendant's financial, social and business class and occupation, contrary to the 14th Amendment to the Constitution of the United States, and contrary to Article I, § 3 of the Constitution of the State of Washington.

"8. That the defendant herein was required and compelled to give evidence against himself, contrary to the provisions of Article I, § 9 of the Constitution of the State of Washington and the 5th and 14th Amendments of the Constitution of the United States.

"9. That the Grand Jury committed misconduct in violation of RCW 10.28.085 and RCW 10.28.100.

"This motion is based upon all of the files, records, transcripts, exhibits and affidavits herein.

[Note continued on p. 11]

tional considerations might compel a different result. The failure to inject the equal protection contention into the case was carried forward to the proceedings before the Washington Supreme Court when petitioner failed to comply with that court's rule prescribing the manner in which contentions are to be brought to its attention. Rule 43 of the Rules on Appeal, Revised Code of Washington, provides that "[n]o alleged error of the superior court will be considered by this court unless the same be definitely pointed out in the 'assignments of error' in appellant's brief." Mere generalized attacks upon the validity of the holding below as petitioner made in his "assignments of error" are not considered by reason of

[&]quot;CHALLENGE TO GRAND JURY-Filed October 18, 1957

[&]quot;Comes Now the defendant herein and challenges each and all of the members of the grand jury which returned the indictment herein for the reason and on the grounds that the Court which impaneled said grand jury made no determination as to whether a state of mind existed on the part of any juror such as would render him unable to act impartially and without prejudice."

Petitioner's 29 "assignments of error" included the following:

[&]quot;6. The lower court erred in denying appellant's motion to set aside and dismiss the indictment.

[&]quot;7. The lower court erred in denying appellant's challenge to grand jury.

[&]quot;25. The court denied appellant's rights to a fair and impartial grand jury."

However, when petitioner did attempt to conform to the rule of the Washington Supreme Court by pointing out "definitely" the errors committed in denying his attacks upon the grand jury, he limited the review to violations of the Due Process Clause as set out below.

[&]quot;29. The appellant was denied due process of law under the Fourteenth Amendment of the Constitution of the United States of America and under the Tenth Amendment of the Constitution of the State of Washington, as follows:

[&]quot;a. by denying appellant his right to challenge the grand jury or to dismiss the indictment for bias and prejudice of the grand jury members.

[Note continued on p. 12]

"this rule sufficient to invoke review of the underlying contentions. See, e. g., Washington v. Tanzymore, 54 Wash. 2d 290, 292, 340 P. 2d 178, 179 (1959); Fowles v. Sweeney, 41 Wash. 2d 182, 188, 248 P. 2d 400, 403, (1952). Nor will the Washington Supreme Court search through the brief proper to find specific contentions which should have been listed within the "assignments of error." See Washington ex rel. Linden v. Bunge, 192 Wash. 245, 251, 73 P. 2d 516, 518-519 (1937). Moreover, the failure of petitioner to argue the constitutional contention in his brief as opposed to merely setting it forth in one sentence of a 125-page brief is considered by the Washington Supreme Court to be an abandonment or waiver of such contention. E. g., Martin v. J. C. Penney Co., 50 Wash. 2d 560, 565, 313 P. 2d 689, 693 (1957); Washington v. Williams, 49 Wash. 2d 354, 356-357, 301 P. 2d 769, 770 (1956). Nor was the equal protection contention made at all in the petitions for rehearing filed after the Supreme Court had agreed with the lower court's interpretation of the statute to exclude petitioner. Assuming arguendo that for the purposes of our jurisdiction the question would have been timely if raised in a petition for rehearing, not having been raised there or elsewhere or actually decided by the Washington Supreme Court, the argument cannot be entertained here under an unbroken line of precedent. E. g., Ferguson v. Georgia, 365 U. S. 570, 572 (1961);

[&]quot;b. by denying his motions for continuance and change of venue thereby forcing appellant to go to trial in an atmosphere of extreme hostility and prejudice.

[&]quot;c. by misconduct of the prosecutor

[&]quot;1. during and after the grand jury proceedings, and

[&]quot;2. at the trial.

[&]quot;d. by denying appellant an opportunity to examine or inspect transcripts of proceedings before the grand jury after the State had introduced evidence of particular statements made before the grand jury by cross-examination or secondary evidence.

[&]quot;e. the means used to accuse and convict appellant were not compatible with reasonable standards of fair play."

Capital City Dairy Co. v. Ohio, 183 U. S. 238, 248 (1902). Furthermore, it was not within the scope of the questions to which the writ of certiorari in this case was specifically limited, 365 U. S. 866, and for this additional reason cannot now be presented.

The final argument under the Equal Protection Clause is that Washington has singled out petitioner for special treatment by denying him the procedural safeguards the law affords others to insure an unbiased grand jury. But this reasoning proceeds on the wholly unsupported assumption that such procedures have been required in Washington in all other cases.5 Moreover, it is contrary to the underlying finding of the Superior Court, in denying the motion to dismiss the indictment, that the grand jurors were lawfully selected and instructed. And even if we were to assume that Washington law requires such procedural safeguards, the petitioner's argument here comes down to a contention that Washington law was misapplied. Such misapplication cannot be shown to be an invidious discrimination. We have said time and again that the Fourteenth Amendment does not "assure uniformity of judicial decisions ... [or] immunity from judicial error " Milwaukee Electric Ry. & Light

There are no reported Washington cases so holding. The two cases on which this claim is predicated, Washington v. Guthrie, 185 Wash. 464 56 P. 2d 160 (1936), and Washington ex rel. Murphy v. Superior Court, 82 Wash. 284, 144 P. 32 (1914), were concerned only with whether the members of the grand jury had been selected by chance as the law requires. Quotations from these cases when read in context clearly have reference only to the desirability of selecting grand jurors by chance. Petitioner in his rehearing petition before the Washington Supreme Court quoted from two unnamed, unreported Washington grand jury proceedings in which some prospective jurors were questioned as to bias. Even if it were clear that all the jurors in those cases were so questioned (which it is not), such isolated, unreviewable instances—would not establish that Washington law requires the claimed procedures.

Co. v. Wisconsin ex rel. Milwaukee, 252 U. S. 100, 106 (1920). Were it otherwise, every alleged misapplication of state law would constitute a federal constitutional question. Finally, were we to vacate this conviction because of a failure to follow certain procedures although it has not been shown that their ultimate end-a fair grand jury proceeding—was not obtained, we would be exalting form over substance contrary to our previous application of the Equal Protection Clause, e. g., Graham

v. West Virginia, 224 U. S. 616, 630 (1912).

Petitioner also contends that a witness before the grand jury was improperly interrogated in a manner which prejudiced his case before that body. It appears that an employee of petitioner's union was called before the grand jury to testify in reference to activities within his employment. During his first appearance he made statements which he subsequently changed on a voluntarily reappearance before the grand jury some two days before the indictment was returned. On the second appearance the prosecutor attacked the witness' changed story as incredible and warned him that he was under oath, that he might be prosecuted for perjury, and that there was no occasion for him to go to jail for petitioner. The record indicates that the prosecutor became incensed over the witness' new story; and though some of his threats were out of bounds, it appears that they had no effect upon the witness whatsoever for he stuck to his story. We can find no irregularity of constitutional proportions, and we therefore reject this contention.

III. THE OBJECTIONS AS TO THE PETIT JURY.

As in his grand jury attack, petitioner makes no claim that any particular petit juror was biased. Instead, he states the publicity which prevented the selection of a fair grand jury also precluded a fair petit jury. He argues that such a strong case of adverse publicity has been

proved that any jury selected in Seattle at the time he was tried must be held to be presumptively biased and that the trial court's adverse rulings on his motions for a change of venue and for continuances were therefore in error. Of course there could be no constitutional infirmity in these rulings if petitioner actually received a trial by an impartial jury. Hence, our inquiry is addressed to that subject.

Petitioner's trial began early in December. This was nine and one-half months after he was first called before the Senate Committee and almost five months after his indictment. Although there was some adverse publicity during the latter period which stemmed from the second tax indictment and later Senate hearings as well as from the trial of petitioner's son, it was neither intensive nor extensive. The news value of the original "disclosures" was diminished, and the items were often relegated to the inner pages. Even the occasional front-page items were straight news stories rather than invidious articles which would tend to arouse ill-will and vindictiveness. If there was a campaign against him as petitioner infers, it was sidetracked by the appearance of other "labor bosses" on the scene who shared the spotlight.

The process of selecting a jury began with the exclusion from the panel of all persons summoned as prospective jurors in the November 12 trial of Dave Beck, Jr. In addition, all persons were excused who were in the court-room at any time during the trial of that case. Next, the members were examined by the court and counsel at length. Of the 52 so examined, only eight admitted bias or a preformed opinion as to petitioner's guilt and six others suggested they might be biased or might have formed an opinion—all of whom were excused. Every juror challenged for cause by petitioner's counsel was excused; in addition petitioner was given six peremptory challenges, all of which were exercised. Although most of

the persons thus selected for the trial jury had been exposed to some of the publicity related above, each indicated that he was not biased, that he had formed no opinion as to petitioner's guilt which would require evidence to remove, and that he would enter the trial with an open mind disregarding anything he had read on the case.

A study of the voir dire indicates clearly that each juror's qualifications as to impartiality far exceeded the minimum standards this Court established in its earlier cases as well as in *Irvin v. Dowd*, 366 U.S. 717 (1961), on which petitioner depends. There we stated:

"To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court." Id., at 723.

We cannot say the pretrial publicity was so intensive and extensive or the examination of the entire panel revealed such prejudice that a court could not believe the answers of the jurors and would be compelled to find bias or preformed opinion as a matter of law. Compare Irvin v. Dowd, supra, at 723-728, where sensational publicity adverse to the accused permeated the small town in which he was tried, the voir dire examination indicated that 90% of 370 prospective jurors and two-thirds of those seated on the jury had an opinion as to guilt, and the accused unsuccessfully challenged for cause several persons accepted on the jury. The fact that petitioner did not challenge for cause any of the jurors so selected is strong evidence that he was convinced the jurors were not biased and had not formed any opinions as to his guilt.

In addition, we note that while the Washington Supreme Court was divided on the question of the right of an accused to an impartial grand jury, the denial of the petitioner's motions based on the bias and prejudice of the petit jury did not raise a single dissenting voice.

"While this Court stands ready to correct violations of constitutional rights, it also holds that 'it is not asking too much that the burden of showing essential unfairness be sustained by him who claims such injustice and seeks to have the result set aside, and that it be sustained not as a matter of speculation but as a demonstrable reality."

United States ex rel. Darcy v. Handy, 351 U. S. 454, 462 (1956). This burden has not been met.

Affirmed.

MR. JUSTICE FRANKFURTER took no part in the decision of this case.

Mr. Justice White took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES

No. 40.—OCTOBER TERM, 1961.

David D. Beck, Petitioner,

v.

Washington.

On Writ of Certiorari to the Supreme Court of the State of Washington.

[May 14, 1962.]

MR. JUSTICE BLACK, with whom THE CHIEF JUSTICE concurs, dissenting.

I dissent from the Court's holding because I think that the failure of the Washington courts to follow their own state law by taking affirmative action to protect the petitioner Beck from being indicted by a biased and prejudiced grand jury was a denial to him of the equal protection of the laws guaranteed by the Fourteenth Amendment.

Since 1854, when Washington was a Territory, that State has had a statute comprehensively governing the use of grand juries in criminal trials which provides in part:

"Challenges to individual grand jurors may be made by . . . [any person in custody or held to answer for an offense] for reason of want of qualification to sit as such juror; and when, in the opinion of the court, a state of mind exists in the juror, such as would render him unable to act impartially and without prejudice." 1

¹ Revised Code of Washington § 10.28.030. The bracketed portion is from § 10.28.010, a companion section relating to challenges to the entire grand jury panel. These provisions were §§ 45–46 of the original 1854 Act.

In State ex rel. Murphy v. Superior Court,² the Washington Supreme Court held in construing this statute that in order to preserve the right of defendants to fair and impartial grand jurors, Washington State judges must select grand jurors by chance, explaining:

"That it was the policy of the legislature to preserve the right to have an unbiased and unprejudiced jury and grand jury, and that no suspicion should attach to the manner of its selection in all cases, cannot be questioned."

Some years later in State v. Guthrie the Washington Supreme Court held that it was not only within the power of Washington State judges but it was also their duty to insure unbiased grand juries, even if so doing meant changing the composition of the grand juries selected by the rules of chance. That court in this latter case reiterated the statute's policy to preserve impartial grand juries and made it crystal clear that juries biased because of judicial inaction are as offensive to the policy of the Washington statute as juries biased because of deliberate judicial selection:

"While this section may be said to relate to challenges made by interested persons, it is not to be construed as denying to the court the right, upon its own motion, to excuse a juror deemed to be disqualified or incompetent. To deny this right would be out of harmony with the policy of the law, which charges the court with the responsibility of insuring that qualified and impartial grand jurors are secured."

That this state policy for impartial grand juries has been generally accepted as the settled law of Washington is demonstrated, not only by the statements of the four

^{2 82} Wash. 284, 286, 144 P. 32, 32-33.

² 185 Wash. 464, 475, 56 P. 2d 160, 164.

judges who voted to reverse this conviction, but also by the current practice cited to us of other Washington trial courts. Indeed, the presiding judge who impaneled the Beck grand jury made sufficient inquiries to insure that grand jurors would not be biased against the State in its investigation of Beck.

The Court, however, finds that the Murphy and Guthrie cases have no relation to the guarantee of a fair and impartial grand jury but are "concerned only with whether the

^{*}These four judges were of the opinion that the above-cited statute and cases required this case to be decided on the "premise that . . . [Beck], as a matter of law, was entitled to an impartial and unprejudiced grand jury," and that the "failure of the court to interrogate the jurors for the existence of possible bias and prejudice against the officers of the teamsters' union constituted prejudicial error." State v. Beck, 56 Wash. 2d 474, 519, 520, 349 P. 2d 387, 412, 413. Justice Hunter in a separate opinion stated that the requirement of impartiality "was announced as essential to a grand jury proceeding by both the legislature and the supreme court of this state, in the statutes and decisions'" 56 Wash. 2d, at 537, 349 P. 2d, at 423-424.

The following were quoted to us as typical voir dire questions asked by presiding judges in the impaneling of two recent grand juries in Washington:

[&]quot;'Q-Would there be anything in your acquaintanceship with Mr. Schuster that would in any way tend to affect your decisions in this Grand Jury investigation?

[&]quot;'A-I don't think so.

[&]quot;'Q—In other words, you wouldn't have any hatred or malice or fear or favor or anything of that nature so far as your deliberating would be concerned in connection with this investigation?

[&]quot;'A-No. . . . '"

[&]quot;'Q—From what you have heard, and I don't believe you live in a vacuum any more than the rest of us, is there anything you have read or that has been suggested by the court in these proceedings that would suggest to you why you couldn't be fair, impartial and objective in making an examination into law enforcement in this county?

[&]quot;'A-No, sir.'"

members of the grand jury had been selected by chance." But even the State has taken no such position, either before the Washington Supreme Court or here. In its brief before the Washington Supreme Court the State acknowledged that the Washington statute as interpreted by the Murphy and Guthrie cases set out a "well-recognized rule" that state "grand juries should be impartial and unprejudiced." And even in this Court the State does not repudiate this acknowledgment but says only that because the Washington Supreme Court was equally divided "the meaning of Washington statutes in regard to grand juries cannot be determined at this point." But of course we must decide what the Washington law is in order to pass upon Beck's claim that Washington has denied him the equal protection of the law.

The Washington statute as authoritatively interpreted by its Supreme Court in the *Murphy* and *Guthrie* cases means not only that defendants are entitled under Washington law to have indictments against them returned by impartial grand jurors but also that Washington State judges are specifically charged with the duty and responsi-

The four judges who voted to reverse this conviction below relied in part upon this acknowledgment, saying:

"'Appellant asserts that the denial of his motion to set aside the indictment constituted error under our statutes and constitution and the constitution of the United States (App. Br. 35).

[&]quot;The state has filed a comprehensive brief consisting of one hundred fifty pages containing the following answer to appellant's argument regarding his right to an impartial and unprejudiced grand jury:

[&]quot;'... Except for citing the well-recognized rule that grand juries should be impartial and unprejudiced (App. Br. 37), the cases are not otherwise applicable.'" (Emphasis supplied by the Washington Supreme Court.) Among the cases cited in appellant's state court brief to support his contention that the grand jury was not organized in accordance with state law were Watts v. Washington Territory, 1 Wash, Terr. 409; State ex rel. Murphy v. Superior Court, 82 Wash. 284, 144 P. 32; and State v. Guthrie, 185 Wash. 464, 56 P. 2d 160.

bility of making all inquiries necessary to insure defendants against being tried on indictments returned by prejudiced grand jurors. Neither the legislature nor the State Supreme Court has ever changed that statute or its interpretation. Certainly, the equal division of judges in the Washington Supreme Court which left Beck's conviction standing did not impair the old statute or its previously established interpretation. Even Washington's own counsel tell us that "since the reasons for the Washington court being equally divided are signed by no more than four judges each, those reasons are not a decision of that court," and "are of no significance whatsoever as far as the decisional law of the state of Washington is concerned." Since the legislature has not changed its statute and the Supreme Court of Washington has not changed its interpretation of that statute, the law of Washington remains the same as it was before Beck's conviction was left standing by the equally divided Washington court. And as it was before, it required Washington judges to protect persons from being indicted by prejudiced and biased grand juries. If Beck has been denied that protection without the law's having been changed, then he has been singled out by the State as the sole person to be so treated. Such a singling out would be a classic invidious discrimination and would amount to a denial of equal protection of the law. We must determine, therefore, whether the grand jury that indicted Beck was impaneled in a way that violated the state law.

This question is not that which the Court treats as crucial, whether there is proof in the record that some individual grand juror was actually prejudiced against Beck, but rather the quite different question of whether the judge who impaneled the grand jury took the precautions required by the statute and its controlling judicial interpretation to insure a grand jury that would not be tainted by prejudice against Beck. I think that the

record in this case shows beyond doubt that the presiding judge failed to do what the state law required him to dotry to keep prejudiced persons off the grand jury. This failure was particularly serious here because of the extraordinary opportunity for prejudgment and prejudice created by the saturation of the Scattle area with publicity hostile and adverse to Beck in the months preceding and during the grand jury hearing.

Petitioner Beck is a long-time resident of Seattle, wellknown to the community as president of the International Brotherhood of Teamsters and as a former president of the Western Conference of Teamsters. Beginning in March. 1957, he became the target of a number of extremely serious charges of crime and corruption by the Senate Select Committee on Improper Activities in the Labor or Management Field and its staff. These charges were given unprecedented circulation in the Seattle area. On March 22-23, banner headlines proclaimed the Committee's charge that Beck had used \$270,000 in Teamster funds for his own benefit. When Beck appeared before the Committee several days later and refused to answer questions regarding the charges, he again drew headline coverage in the Seattle press: "BECK TAKES 5TH AMENDMENT." One television station went so far as to run a 93/4-hour telecast of the proceedings. May 3, the headlines announced the fact that Beck had been indicted for federal tax evasion and that a former mayor of Seattle had received a special appointment to prosecute further charges before a state grand jury. On May 9, 15 and 16, other front-page, page-wide headlines appeared, the last charging that Beck had mis-

⁷ "The amount, intensity, and derogatory nature of the publicity received-by appellant during this period is without precedent in the state of Washington." 56 Wash. 2d, at 511, 349 P. 2d, at 408 (opinion of Judge Donworth for the four judges who voted to reverse).

used his position of union trust no less than 52 different times. On May 17, a three-column front-page storyrecounted the fact that Beck had pleaded the Fifth Amendment 60 times to questions from the Senate Com-And on May 20, the day the grand jury was impaneled, headlines announced Beck's expulsion from his AFL-CIO post on the ground that "Dave Beck was found 'guilty as charged' by the AFL-CIO executive council, and that same paper also carried a charge by Senator McClellan that Beck "has committed many criminal offenses." All the while radio, television, the national news magazines and the press in lesser frontpage and backup stories published charges of a similar This flood of intense public accusation of crime and breach of trust by prominent and highly placed persons, coupled with publicity resulting from Beck's refusal on grounds of possible self-incrimination to answer questions before the Senate Committee as to the charges made. imposed a very heavy duty on the presiding judge under Washington law to protect Beck from a biased and prejudiced grand jury.

Far from discharging that duty, however, the judge actually increased the probability that persons biased against Beck would be left on the grand jury. For while he asked a number of questions directed toward excluding from the jury union members who might be sympathetic to Beck, he made no effective effort at all to protect Beck. Thus, he managed to ask almost every juror whether he had any connection with the Teamsters or any affiliated union, whether he knew any of the Teamster officers, or whether he had ever been a union officer himself. But, despite his knowledge of the widespread prejudice-breeding publicity against Beck, the judge failed to ask a single juror a single question regarding whether he had reading about, heard about or discussed the charges against Beck.

Moreover, he failed to ask a single juror who actually sat on the jury whether he was prejudiced against Beck or had already made up his mind about the many public charges." Indeed as to those jurors the most searching question which even the Court has managed to pull from the record was the sterile query: "Is there anything about service on this grand jury that might embarrass you?" Even the most tenuous logic could not equate that search for embarrassment with a search for bias and prejudice. That a search for bias and prejudice would have shown its existence hardly seems questionable, particularly in view of the fact that six months later when the publicity adverse to Beck was, according to the Court, "neither intensive nor extensive," 15 of 43 prospective petit jurors subjected to voir dire questioning expressed some degree of bias or prejudice in the case."

After such a restrained effort toward affording Beck the protection of the unbiased grand jury assured by Washington law, it would be expected that the presiding judge would have given careful and detailed instructions to the grand jury in order to dispel any possible prejudice in their minds. Not so here, however. In fact the instructions given not only failed to cure, they made the situation worse. For instead of instructing that the testimony and charges before the Senate Committee were not evidence before the grand jury and that it would be highly improper for the grand jury to consider them at all, the presiding judge called the jury's attention to the charges of theft and embezzlement against Beck before the Committee and told the jury that it was under a duty to

⁸ No prospective grand juror was asked if he was prejudiced against Beck, and only three were asked if they were conscious of bias or prejudice of any kind. Two of these were excused.

Although 52 prospective jurors were admitted to voir dire, nine of these were excused for personal reasons of health or convenience and were not therefore questioned by either counsel.

determine whether these charges were refuted by an explanation attributed by the press to Beck:

"It seems unnecessary to review the recent testimony before a Senate Investigating Committee except to say that disclosures have been made indicating that officers of the Teamsters Union have, through trick and device, embezzled or stolen hundreds of thousands of dollars of the funds of that union—money which had come to the union from the dues of its members. . . .

"The president of the Teamsters Union has publicly declared that the money he received from the union was a loan which he has repaid. This presents a question of fact, the truth of which is for you to ascertain."

Together with the additional facts set out by Mr. Justice Douglas in his dissent, what I have said above seems clearly to show that the presiding judge took none of the steps, either in interrogation or in instruction, that in the atmosphere of the day would have fulfilled his state statutory duty to insure a grand jury unbiased against Beck.

This failure of the judge denies petitioner a protection which Washington has provided to similarly situated defendants over the years and which, so far is now fore-seeable, Washington will continue to provide to all Washington defendants in the future. This failure would be cast in a different light if the Washington Legislature had repealed its law or if its Supreme Court had altered its interpretation and set out a general rule abrogating the right to have judges take affirmative action to insure an unbiased grand jury. But without any change in the prior law or any sure indication that Beck's "law" is the law of the future, the State of Washington in convicting Beck applies special and unfair treatment to him. For only Beck, a single individual out of all the people charged

with crime by indictment in Washington, is denied his clearly defined right under the law to have the state judicial system insure his indictment by "impartial grand jurors." Through the device of an equally divided vote in the Washington Supreme Court he goes to prison for 15 years. I think that the Equal Protection Clause of the Fourteenth Amendment forbids such an invidious picking out of one individual to bear legal burdens that are not imposed upon others similarly situated.10 I cannot agree with the Court that such a gross discrimination against a single individual with such disastrous consequences can be treated as a mere trial error. For a judicial decision which sends a man to prison by refusing to apply settled law which always has been and so far as appears will continue to be-applied to all other defendants similarly situated is far more than a mere misapplication of state law.11 It is a denial of equal protection of the law and a State should no more be allowed to deny a defendant protection of its laws through its judicial branch than through its legislative or executive branches.

I think that petitioner was denied equal protection of the law for still another reason. The four Washington judges who voted to affirm the conviction below, and whose views have therefore determined the outcome of Beck's case, agreed that those "in custody or held [on bail] to answer for an offense," the "[p]ersons for whose benefit that statute was enacted," are entitled to grand

¹⁰ See Atchison, Topeka & Santa Fe R. Co. v. Matthews, 174 U. S. 96, 104-105. Cf. McFarland v. American Sugar Refining Co., 241 U. S. 79, 86.

of the Washington courts to apply their prior settled law as to a single statute denies petitioner Beck the equal protection of the law, Milwaukee Elec. R. Co. v. Milwaukee, 252 U. S. 100, involves the question of whether the Wisconsin Supreme Court was inconsistent in its treatment of two different municipal legislative provisions.

jurors without bias or prejudice.12 This divides all persons suspected of larceny by embezzlement, as petitioner was, into two classes: (1) those persons in custody or on bail, and (2) those persons who are only under investigation by grand jury. The first class is entitled to have an impartial and unbiased grand jury; the second is not. The four judges who wanted to reverse this conviction could see no reason, nor can I, for saying that one charged with crime and in jail or on bail should be entitled to an unprejudiced grand jury but one who happened not to be already held for grand jury action could validly be indicted by a biased and prejudiced grand jury. So far as the need to be free from prosecution by a prejudiced grand jury is concerned, there can be no rational distinction between the need of the man who is not yet in custody and the man who is in jail or on bail,13 particularly where as

^{12 56} Wash. 2d, at 480, 349 P. 2d, at 390.

Fourteenth Amendment, other courts had refused to allow any distinction as to the right to a proper composition of a grand jury under state law between those in jail or on bail and those merely subject to grand jury investigation. Thus in *United States* v. *Blodgett*, 30 Fed. Cas. 1157, 1159 (No. 18312), the court said:

[&]quot;True, he was not arrested and imprisoned on any criminal charge, and now brought hither by order of the court, nor is he under bail or recognizance; but because he is not in any of these constrained positions is he any less entitled to a grand jury of his country, legally qualified under its laws? Surely not."

And in McQuillen v. State, 16 Miss. 587, 597, the Mississippi court said as to a purported distinction between the right of persons in court at the time of indictment to challenge grand jurors for cause and the right of those not in court to challenge such jurors:

[&]quot;[T]he law works unequally by allowing one class of persons to object to the competency of the grand jury, whilst another class has no such privilege. This cannot be. The law furnishes the same security to all, and the same principle which gives to a prisoner in court the right to challenge, gives to one who is not in court the right to accomplish the same end by plea . . ." See also Hardin v. State. 22 Ind. 347, 351-352; Crowley v. United States, 194 U. S. 461, 469-470.

here the grand jury was called for the specific purpose of examining into petitioner's activities and was so instructed. No doubt the clearest evidence of the lack of rationality in such a distinction is the fact that for 108 years the State of Washington has itself made no such distinction. For even though the statute on its face applies only to those in custody or on bail, it has always been interpreted to guarantee an impartial grand jury to all.

A fair trial under fair procedure is a basic element in our government. Zealous partisans filled with bias and prejudice have no place among those whom government selects to play important parts in trials designed to lead to fair determinations of guilt or innocence. Whether the due process provisions of the Federal Constitution require, however, that every procedural step in a trial. including the impaneling of a grand jury, be absolutely fair and impartial, I need not determine here. But in considering whether people charged with the same crimes under the same circumstances, subject to the same penalties in the same place may be divided up into classes, some of whom are given the benefit of fair grand jurors and some of whom are not, we must keep in mind the high standard of fair and equal treatment imposed by the Equal Protection Clause of the Fourteenth Amendment, as well as the important part that grand juries play in trial procedures when they are used. For me the need for fair grand juries as between those who have not yet been formally arrested and those who have is too much the same to be treated as though it were different. I would not permit the State of Washington to lay its hands so unequally upon groups whose interests, whose needs and whose dangers are so similar.14

¹⁴ Cf. Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535.

Not surprisingly the Court attempts to shrug off both of Beck's equal protection claims without reaching them on the merits. As to his first claim, that he was denied equal protection by the failure of the Washington courts to accord him the benefit of the state law guaranteeing an impartial grand jury, this Court asserts that even if Beck was, unlike everyone else, denied the benefit of a grand jury which had been questioned by the presiding judge to protect against bias, the error was harmless because he presented no proof to show that the grand jury selected in violation of Washington law was actually biased or prejudiced against him. But the Washington law puts the duty on the judge to insure against bias not on the defendant to show bias. The court cites absolutely no authority and I have been unable to find any that when a Washington State judge neglects his duty to assure an impartial grand jury his error is cured by the failure of the defendant to show actual bias on the part of one or more grand jurors. On the contrary, the Washington Supreme Court said in State ex rel. Murphy v. Superior Court:

"Granting, for the sake of argument, that no real injustice has been done in this particular case, and that a fair jury was selected, to approve the method adopted by the court would be to permit a judge, if he so willed, to provide a grand jury of his own choosing in every case under color of law." 15

Moreover, even if it were possible under Washington law so cavalierly to fritter away important rights of criminal procedure designed to achieve fairness, this record should satisfy the most doubting Thomas that the failure to insure a proper grand jury here was in fact not harmless. While the trial court made no determination as to whether the grand jury was prejudiced against Beck, four of the

^{15 82} Wash. 284, 287-288, 144 P. 32, 33.

eight Washington Supreme Court judges who ruled on the question felt that a conclusive showing of prejudice had been made. Judge Donworth, speaking for those four judges, after an exhaustive review of the facts concluded:

"I think it would be unrealistic to believe that a very substantial number of the citizens of the community had not adopted, consciously or unconsciously, an attitude of bias and prejudice toward appellant at the time the grand jury was convened. If ever there was a case which-required the most stringent observance of every safeguard known to the law to protect a citizen against bias and prejudice, this was it." 16

The other four judges did say: "There is no showing of bias or prejudice," but gave not the slightest evidentiary or even argumentative support to show the correctness of this off-hand statement." In these circumstances where there has been no finding by the trial court and where the highest court of the State has divided evenly so that there is no finding there either, our ordinary "solemn duty to make independent inquiry and determination of the disputed facts" upon which the question of denial of equal protection of the law turns becomes particularly pointed. Considering the overwhelming evidence to support the four judges who thought that petitioner had made a showing of prejudice, it seems inconceivable to me that it can fairly be said that no showing of prejudice was made.

As to Beck's second claim, that it is a denial of equal protection of the law to afford those in jail or on bail the judicial assurance of an impartial grand jury while denying such protection to those not in jail or on bail like Beck, the Court apparently does not claim that

^{16 56} Wash. 2d, at 512, 349 P. 2d, at 408.

¹⁷ 56 Wash. 2d, at 480, 349 P. 2d, at 390.

¹⁸ Pierre v. Louisiana, 306 U. S. 354, 358.

the error was harmless but discovers yet another way to avoid having to pass on the plain merits of his constitutional claim. It concludes on a number of grounds that petitioner's claim was not properly presented to the Washington Supreme Court. I do not think any one of the Court's grounds or all of them together justify its avoidance of determining Beck's constitutional contention on its merits.

- before the State Supreme Court because "Petitioner's formal attack at the trial court level did not even mention Section 10.28.030" But Beck did claim that that section had not been complied with both in his "Challenge to the grand jury" and in his separate motion to set aside the indictment, both of which are set out in note 3 of the Court's opinion. In fact his challenge to the grand jury was specifically cast in the terms of § 10.28.030. And Beck's reliance on § 10.28.030 and related sections of Washington's grand jury statute was emphasized time and time again by his counsel's arguments to the trial court, both oral and written, on the challenge and on his separate motion to dismiss the indictment. For example, trial counsel said:
 - "... [T]he decisions which we have been able to find all indicate the same thing. That is, that the Grand Jury just like the trial jury, must be unbiased and unprejudiced, and indeed in a couple of the decisions they referred to this 10.28.030 in the same manner I have done to indicate the intent of the Legislature." 19
 - (b) The Court says: "That the prosecution and the court viewed petitioner as outside the scope of

¹⁹ The decisions referred to were Watts v. Washington Territory.

1 Wash. Terr. 409; State ex rel. Murphy v. Superior Court, 82 Wash.
284, 144 P. 32; and State v. Guthrie, 185 Wash. 464, 56 P. 2d 160.

§ 10.28.030 was brought home to him in the course of the trial court proceedings on his grand jury attack." I cannot agree that the trial court construed § 10.28.030 as denying Beck the right to an impartial and unprejudiced grand jury or informed him to that effect. While it is true that the State's counsel argued and the trial court agreed that petitioner could not question the method of impaneling the grand jury by a "Challenge to the grand jury," the trial court never even intimated that § 10.28.030 limited its assurance of an impartial and unprejudiced grand jury only to those who were indicted while they were in jail or out on bond. On the contrary, the trial court admitted, even though it ultimately denied petitioner's motion without further comment, that petitioner could attack the grand jury-"incidentally on a motion to set aside the indictment"-precisely the kind of motion the petitioner actually made under § 10.40.070, which motion is set out in note 3 of the Court's opinion.

- (c) The Court says that the State Supreme Court was not required to pass on petitioner's claim of denial of equal protection because it was not "definitely pointed out in the 'assignments of error' in 'appellant's brief," as required by Rule 43 of the State Rules on Appeal. But as just pointed out the trial court had not construed the statute as denving Beck who was not in custody or on bail the benefit of an impartial grand jury while insuring such a grand jury for defendants who were in custody or on bail. Since the trial court had made no such ruling, Beck could not of course assign as error a ruling that had not been made. He did, however, properly assign errors which, as shown in the Court's note 4, were sufficiently broad to challenge the trial court's failure to comply with state law in insuring an impartial grand jury. That was all that he could do at that time.
- (d) Another ground for this Court's refusal to rule on Beck's claim is that: "The Washington Supreme Court

has unfailingly refused to consider constitutional attacks upon statutes not made in the trial court..." But even a casual investigation of the opinions of that court shows that it has not "unfailingly" followed any such practice. Moreover, no Washington case or any other has been cited to prove that a question of equal protection of the law must be raised in the trial court even though that court does not itself ever make a ruling which denies equal protection of the law. And I would think that this Court would not tolerate use of such a state device to bar correction of constitutional violations.

been properly presented to the Washington Supreme Court, I find that wholly immaterial here. For as we said in Raley v. Ohio: "There can be no question as to the proper presentation of a federal claim when the highest state court passes on it." ²¹ And here although undoubtedly familiar with the state rule and the state cases dug up here by this Court for the first time to show that Beck's claim was not properly presented, the fact is that the eight judges of the Washington Supreme Court who sat in this case did actually pass on Beck's claim in his brief before them that to take away his right to an impartial grand jury because he was not in custody or on bail would deny him the equal protection of the laws. That claim in Beck's State Supreme Court brief was:

"In fact, to permit one who has already been arrested to challenge the mental qualifications of a grand juror, while denying this right to one who has not been arrested, would amount to a denial of equal protec-

²⁰ See, e. g., Washington v. Griffith, 52 Wash. 2d 721, 328 P. 2d 897; Lee v. Seattle-First National Bank, 49 Wash. 2d 254, 299 P. 2d 1066.

^{21 360} U. S. 423, 436.

tion of the law. This is particularly true . . . in the state of Washington " 22

In response to Beck's claim Judge Donworth, speaking for the four judges who voted to reverse the conviction, fully agreed with his contention, saying:

"I do not understand how it can be said, under the facts shown in this record, that the reason entitling a person in custody or held to answer for an offense to be investigated by an impartial and unprejudiced grand jury, does not apply equally well to appellant. It is axiomatic that all men are equal before the law and are entitled to the same rights under the same or sintilar circumstances.

"Until the legislature amends or repeals the statutory law, . . . it must be applied with equal effect to

²² I know of no reason why this Court should say that the Washington Supreme Court would not "search through the brief" "to find". this contention, for I am not willing to assume that the members of the highest court of Washington did not read the briefs of the parties in this case. I must also take issue with the Court's view that this particular constitutional contention was stated infonly one sentence. As I read the briefs before me petitioner took up almost two whole pages in presenting this argument and cites eight cases and other authorities. Moreover, the four State Supreme Court judges who voted to affirm and who had petitioner's brief before them referred to that part of the brief devoted to the "Grand Jury Proceedings" as "the longest section of appellant's brief." 56 Wash. 2d, at 475, 349 P. 2d, at 387. Since they had to read this section to refer to it in this way and to discuss it, I am at a complete loss to understand the Court's further statement that petitioner's argument on this point was "considered by the Washington Supreme Court to be an abandonment or waiver of such contention." I can only consider the abandonment found by this Court to be an'ex post facto abandonment as far as the Washington Supreme Court is concerned because as pointed out above that court actually considered and passed on the point.

every person whose conduct is under investigation by a grand jury pursuant to the court's charge to it." 23

The other four judges, obviously disagreeing with their brethren and rejecting Beck's equal protection claim, held that "There was a reason" for the statutory guarantee of an impartial grand jury for one "in custody or held to answer for an offense," although denying it to one not in custody or on bail."

(f) The Courtalso goes so far as to say that Beck's constitutional question was not included among those questions presented which our writ of certiorari was granted to review. I disagree. In the questions presented in the petition for certiorari and in the brief supporting that petition, counsel for Beck repeatedly asserted that in the manner of selecting this grand jury Beck had been denied the equal protection of the law. The core of all these claims is discrimination growing out of the manner of the selection of the grand jury. The particular classification claim which the Court seeks to avoid passing on is also a claimed discrimination with reference to the manner of selection of the grand jury. Since all these contentions are inextricably intertwined, under our decision of last year in Bounton v. Virginia 25 I see no more reason for refusing to pass on one than another. case held a statutory claim of discrimination to have been

²³ 56 Wash. 2d, at 528, 530, 349 P. 2d, at 418, 419. (Emphasis supplied by Judge Donworth.) To suggest, as the Court does, that this discussion involves "interpretation" of the statute but does not relate to equal protection of the laws is to draw a distinction that simply does not exist. What the four judges who wanted to reverse this conviction said in the plainest words possible was that the interpretation of the statute adopted by the four who voted to affirm is one that is wrong because, among other reasons, it denies equal protection of the law.

^{24 56} Wash. 2d, at 479, 349 P. 2d, at 390.

^{25 364} U. S. 454, 457.

sufficiently raised where discrimination generally was "the core of the . . . broad constitutional questions presented." Moreover, I agree with Mr. Justice Douglas that under Rule 23 which prohibits "unnecessary detail" and which deems a question presented "to include every subsidiary question fairly comprised therein" even the most general claim of equal protection would have been sufficient to raise petitioner's claim.

The petitioner here, however, has no need to rely on either the *Boynton* case or on the broad mandate of Rule 23, for his claims are clearly encompassed among the specific questions as to which the writ of certiorari was granted. Two of those questions read in part:

- "... [D]oes a person ... have a right under the due process and equal protection clauses of the Fourteenth Amendment to have the charges and evidence considered by a grand jury which was fair and impartial or, at least, which was instructed and directed to act fairly and impartially?"
 - "... [D] id he [petitioner] have a right under the due process and equal protection clauses of the Fourteenth Amendment to have the grand jury impaneled in a manner which would prevent or at least tend to prevent the selection of biased and prejudiced grand jurors?"

Since petitioner's claim is that he was denied equal protection of the law by the failure of the presiding judge to provide the protection, guaranteed to others, of a grand jury impaneled in a manner that would insure against biased and prejudiced grand jurors, it seems inconceivable that this conviction should be sustained on the basis that the claim was not included in the petition for certiorari.

The net result of what has taken place in the Washington Supreme Court and here is to leave Beck in this

predicament: the State Supreme Court considered his contention, tried to decide it but could not because it was equally divided; this Court on the contrary refuses to decide it at all on the ground that Beck has never raised such a question anywhere. The practical consequence of this predicament is to accept the argument of the State that if Beck's constitutional rights are to be protected he must depend upon "the Washington legislature and not the United States Supreme Court." For this Court to accept such a consequence seems to me to be an abandonment of its solemn responsibility to protect the constitutional rights of the people.

The rules of practice which Congress and this Court have adopted over the course of years to crystallize and define the issues properly before the Court were designed to assist the Court in the fair and impartial administration of justice. I cannot believe that this end has been

achieved here.

²⁶ That argument was fully set out in the State's Opposition to the Petition for certificari: "The effect of the Washington court decision in the instant case is that the meaning of Washington statutes in regard to grand juries cannot be determined at this point. It would follow that this determination also is binding on the United States Supreme Court.

[&]quot;Since there is neither a Federal nor a Washington state Constitutional right to an impartial grand jury, and the Washington Supreme Court cannot determine what the Washington statutes prescribe in that regard, the Washington legislature and not the United States Supreme Court must answer that question." (Emphasis supplied.)

SUPREME COURT OF THE UNITED STATES

No. 40.—OCTOBER TERM, 1961.

David D. Beck, Petitioner, v. On Writ of Certiorari to the Supreme Court of the State of Washington.

[May 14, 1962.]

Mr. JUSTICE DOUGLAS, dissenting.

I.

Although, according to Hurtado v. California, 110 U. S. 516, Washington need not use the grand jury in order to bring criminal charges against persons, it occasionally does use one; and a grand jury was impaneled in this case. It is well-settled that when either the Federal Government or a State uses a grand jury, the accused is entitled to those procedures which will insure, so far as possible, that the grand jury selected is fair and impartial. That is the reason why the systematic exclusion of Negroes from grand jury service infects the accusatory process. See Pierre v. Louisiana, 306 U. S. 354; Cassell v. Texas, 339 U. S. 282. The same principle was applied in Hernandez v. Texas, 347 U. S. 475, when Mexicans

¹ Since petitioner was not represented by counsel at the impaneling of the grand jury, his objection at the return of the indictment was timely. As stated in *Crowley v. United States*, 194 U. S. 461, 469-470:

[&]quot;Some of the cases have gone so far as to hold that an objection to the personal qualifications of grand jurors is not available for the accused unless made before the indictment is returned in court. Such a rule would, in many cases, operate to deny altogether the right of an accused to question the qualifications of those who found the indictment against him; for he may not know, indeed, is not entitled, of right, to know, that his acts are the subject of examination by the grand jury."

were systematically excluded from duty as grand and petit jurors. The same principle would also apply "if a law should be passed excluding all naturalized Celtic Irishmen" from grand jury duty. Strauder v. West Virginia, 100 U. S. 303, 308.

Racial discrimination is only one aspect of the grand jury problem. As stated in Hale v. Henkel, 201 U. S. 43, 59, "... the most valuable function of the grand jury was not only to examine into the commission of crimes, but to stand between the prosecutor and the accused, and to determine whether the charge was founded upon credible testimony or was dictated by malice or personal ill-will." We emphasized in Hoffman v. United States, 341 U. S. 479, 485, the importance of "the continuing necessity that prosecutors and courts alike be 'alert to repress' any abuses of the investigatory power" of the grand jury. We recently stated in Costello v. United States, 350 U. S. 359, 362, that:

"The grand jury is an English institution, brought to this country by the early colonists and incorporated in the Constitution by the Founders. There is every reason to believe that our constitutional grand jury was intended to operate substantially like its English progenitor. The basic purpose of the English grand jury was to provide a fair method for instituting criminal proceedings against persons believed to have committed crimes." (Italics added.)

The Washington Supreme Court, which affirmed this judgment of conviction, did so by an equally divided vote. The four voting for affirmance stated that absent a statutory requirement, "bias or prejudice" on the part of the grand jury was irrelevant. 56 Wash. 2d 474, 480; 349 P. 2d 387, 390.

² See Morse, A Survey of the Grand Jury System, 10 Ore. L. Rev. 217.

The case of Frisbie v. Collins, 342 U.S. 519, is offered as justification for the use of an unfair procedure in bringing this charge against petitioner. We there held that forcibly abducting a person and bringing him into the State did not vitiate a state conviction where the trial was fair and pursuant to constitutional procedural requirements. Here, however, a part of the criminal proceeding is itself infected with unfairness. Whether it was necessary to use the grand fury is immaterial. It was used; and the question is whether it was used unfairly. The case is, therefore, like those where procedures, anterior to the trial, are oppressive. A notorious example is an unlawful arrest or the use of detention by the police to obtain a confession. See, e. g., Payne v. Arkansas, 356 U. S. 560; Fikes v. Alabama, 352 U. S. 191; Watts v. Indiana, 338 U.S. 49; Turner v. Pennsylvania, 338 U.S. 62; Ward v. Texas, 316 U.S. 547. Another example is denial of the right to counsel. As stated in Powell v. Alabama, 287 U. S. 45, 57, that right extends to a period anterior to the trial itself "when consultation, thoroughgoing investigation and preparation" are "vitally important." Cf. Spano v. New York, 360 U. S. 315, 324 (concurring opinion).

Could we possibly sustain a conviction obtained in either a state or federal court where the grand jury that brought the charge was composed of the accused's political enemies? If we did, we would sanction prosecution for private, not public, purposes. Whenever unfairness can be shown to infect any part of a criminal proceeding, we should hold that the requirements of due process are lacking.

A dissent in Cassell v. Texas, 339 U. S. 282, 298, said. "It hardly lies in the mouth of a defendant whom a fairly chosen trial jury has found guilty beyond reasonable doubt to say that his indictment is attributable to prejudice." Id., at 302. But the Court did not agree. Since

a grand jury was used to indict, the Court held the grand jury to constitutional requirements. We should do the same here. As we stated in *Hill* v. *Texas*, 316 U. S. 400, 406:

"It is the State's function, not ours, to assess the evidence against a defendant. But it is our duty as well as the State's to see to it that throughout the procedure for bringing him to justice he shall enjoy the protection which the Constitution guarantees. Where, as in this case, timely objection has laid bare a discrimination in the selection of grand jurors, the conviction cannot stand, because the Constitution prohibits the procedure by which it was obtained."

A grand jury serves a high function. As stated in United States v. Wells, 163 F. 313, 324:

"It is a familiar historical fact that the system was devised to prevent harassments growing out of malicious, unfounded, or vexatious accusations. That it serves the purpose of allowing prosecutions to be initiated by the people themselves in no way detracts from the fact that it still stands as a safeguard against arbitrary or oppressive actions."

The same view was stated by Mr. Justice Field, sitting as Circuit Justice:

"In this country, from the popular character of our institutions, there has seldom been any contest between the government and the citizen, which required the existence of the grand jury as a protection against oppressive action of the government. Yet the intitution was adopted in this country, and is continued from considerations similar to those which gives to it its chief value in England, and is designed as a means, not only of bringing to trial persons accused of public offenses upon just grounds,

but also as a means of protecting the citizen against unfounded accusation, whether it come from government or be prompted by partisan passion or private enmity." 30 Fed. Cas. 992, 993, No. 18,255.

One who reads this record is left with doubts of the most serious character that the procedure used in the selection of the grand jury was fair in light of the unusual conditions that obtained at the time.

II.

Petitioner on March 26 and 27, 1957, appeared before a Senate Committee in Washington, D. C., and during his questioning invoked the Fifth Amendment 150 times.

On May 2, 1957, petitioner was indicted in Tacoma

by a federal grand jury for income tax evasion.

On May 8, 1957, petitioner was recalled to testify before the Senate Committee and during another long interrogation invoked the Fifth Amendment about 60 times.

During these hearings the Committee members made various comments concerning petitioner. As Judge Donworth, speaking for himself and three other members of the Supreme Court of Washington, said:

"These comments, which were extremely derogatory to appellant, were widely circulated by all news media throughout the United States, and particularly in the Seattle area. In these comments, appellant was characterized as a thief, and it was asserted that he was guilty of fraud and other illegal conduct with respect to his management of the affairs of the teamsters' union as its principal officer in the eleven western states, and later in his position as its international president.

"These conclusions and opinions (particularly those expressed by Senator McClellan, the chairman of the committee) were displayed by local newspapers on the front page in prominent headlines. The following are a few of the comments which were referred to in such headlines which appeared in Seattle newspapers:

"TEAMSTERS' CASH KEPT GOING TO BECK AFTER HE BECAME UNION PRESI-DENT, SAYS PROBER.' Seattle Times, March 23,

1957.

"'BECK GIVES "BLACK EYE" TO LABOR, SAYS SEN. McNAMARA.' Seattle Times, March 27, 1957.

"'SENATE PROBE LIFTS LID ON BECK BEER BUSINESS—USE OF UNION MONEY RELATED.' Seattle Post-Intelligencer, May '9, 1957.

"Substantial portions of the committee proceedings relating to these charges were also reproduced in the course of news broadcasts on local radio and television stations.

"The amount, intensity, and derogatory nature of the publicity received by appellant during this period is without precedent in the state of Washington. A Seattle newspaper carried a news item reporting that the switchboard of a local radio station that had broadcast the committee proceedings on the preceding day was jammed with calls, and that the officials of the station characterized the response to the broadcast on the part of the public as 'astrounding,' and that such response was greater than that resulting from any other broadcast ever aired by them. The serious accusations made by United States senators in the committee hearings are generally regarded by laymen as being officials charges (which appellant had refused to answer), and thus the impression was created among the general public that appellant had been found guilty of a crime." 56 Wash. 2d 474, 510-512; 349 P. 2d 387, 408.

The grand jury which returned the indictment was convened on May 20, 1957.

The effect of the saturation of Seattle with this adverse publicity was summarized by Judge Donworth:

"The natural effect of this publicity was that, in the eyes of the average citizen, the character of appellant had been thoroughly discredited in the Seattle area on or before May 20, 1957." 56 Wash. 2d, at 512; 349 P. 2d, at 408.

The trial court at the time of the selection of the petit jury referred to the publicity the case had received in the papers and over the radio and TV and sought to determine whether any jurors had become prejudiced or biased against the accused. The judge who impaneled the grand jury took no such precautions. He excused three who might have been prejudiced because they were or had been members of petitioner's union or of affiliated unions. He excused one employer who in reply to the question "Are you conscious of any bias, prejudice, or sympathy in this case at all?" said, "That is pretty hard to answer." Of the six he excused two admitted prejudice. Not once did the judge inquire as to the intensive adverse publicity petitioner had received and its likely effect on each juror. He asked two types of questions. The one already noted, whether the juror was conscious of bias, etc., and the other one, "Is there anything about sitting on this grand jury that might embarrass you at all?" It seems to me that the judge was derelict in failing to ascertain whether the amount of adverse publicity petitioner had received had prejudiced the jurors toward the case about to be presented. Although he made no such inquiry of any juror, he proceeded upon the assumption that the grand jury had full knowledge of the activities of the Senate Committee:

> "We come now to the purpose of this grand jury and the reason which the judges of this court thought

sufficient to justify the expense to the county, and the inconvenience to and sacrifice by you, which this grand jury session will require.

"It seems unnecessary to review the recent testimony before a Senate Investigating Committee except to say that disclosures have been made indicating that officers of the Teamsters Union have, through trick and device, embezzled or stolen hundreds of thousands of dollars of the funds of that union-money which had come to the union from the dues of its members. It has been alleged that many of these transactions, through which the money was siphoned out of the union treasury, occurred in King County. Such crimes, if committed, cannot be punished under Federal law, or under any law other than that of the State of Washington, and prosecution must take place in King County. The necessary. criminal charges can only be brought in this county upon indictment by the grand jury or information filed by the prosecuting attorney.

"The president of the Teamsters Union has publicly declared that the money he received from the union was a loan which he has repaid. This presents a question of fact, the truth of which is for you to ascertain.

"You may find that many of the transactions happened more than three years ago; this would raise the question of the statute of limitations, which ordinarily bars a prosecution for larceny after three years. There are some instances, however, where the period is extended. This is a question of law and you should be guided by the advice of the prosecutors on this and similar questions. Your investigation may conceivably result in the adoption of better standards of conduct for union officials." No admonition was given that radio, television, and newspaper reports were not the gospel. No warning was made that one who invokes the Fifth Amendment does not admit guilt. No admonition was given that the deliberations should be free of bias or prejudice. The question is not whether one who receives large-scale adverse publicity can escape grand jury investigation nor whether the hue and cry attendant on adverse publicity must have died down before the grand jury can make its investigation. This case shows the need to make as sure as is humanly possible that one after whom the mob and public passion are in full pursuit is treated fairly, that the grand jury stands between him and an aroused public, that the judge uses the necessary procedures to insure dispassionate consideration of the charge.

The State of Washington uses the grand jury only occasionally, the normal method of accusation being by information. Whether grand jurors in other cases are screened for bias or prejudice does not appear. Yet on the assumption that they are not, Beck's objections should not be in vain. Whether the unfair device is used customarily or only once, it does not comport with the Due Process Clause of the Fourteenth Amendment.

III.

I think the Court is correct in rejecting the general equal protection question on the merits. But I do think that a narrow phase of equal protection was raised and should be decided in petitioner's favor.³ It is conceded

This is not a case where decision is asked on a question not "formally presented" by the petition for certiorari, as was true in General Pictures C. v. Electric Co., 304 U. S. 175, 179. It appears from the record that the question of equal protection was a "definite issue" decided by Washington Supreme Court (Seaboard Air Line R. Co. v. Duvall, 225 U. S. 477, 487); and in at least two places in the questions presented by the petition for certiorari that decision was challenged for denial of equal protection. This was clearly sufficient, as Rule

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that if Beck had been "in custody or held to answer for an offense" he would have been entitled to challenge the grand jurors for prejudice. 56 Wash. 2d, at 479; 349 P.

23 (1) (C), in haec verba, discourages detailed amplification of the questions presented:

"The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. . . ."

The petition states, inter alia:

"Where accusation is by a grand jury indictment, does a person (in this case a member and officer of a labor union who at the time of the grand jury proceedings was the subject of continuous, extensive and intensely prejudicial publicity) have a right under the due process and equal protection clauses of the Fourteenth Amendment to have the charges and evidence considered by a grand jury which was fair and impartial or, at least, which was instructed and directed to act fairly and impartially? . . .

"Where petitioner was a member and officer of a labor union, and where prejudicial and inflammatory charges against him were being widely and intensively disseminated by all news media, did he have a right under the due process and equal protection clauses of the Fourteenth Amendment to have the grand jury impaneled in a manner which would prevent or at least tend to prevent the selection of biased and prejudiced grand jurors?"

This is enough to bring the case within our rule that only the questions "urged in the petition for certiorari and incidental to their determination will be considered on review." Rorick v. Devon

Syndicate, 307 U.S. 299, 303.

At least four of the judges below thought that the equal protection point treated in this dissent was an issue. For after referring to the Washington statute which gives those in custody or held to answer for an offense the right to an impartial and unprejudiced grand jury (56 Wash. 2d, at 527-528; 349 P. 2d, at 417) they stated: "Until the legislature amends or repeals the statutory law, quoted and emphasized above, it must be applied with equal effect to every person whose conduct is under investigation by a grand jury pursuant to the court's charge to it." 56 Wash. 2d, at 530; 349 P. 2d, at 419. That seems to measufficient to bring this ruling within the statement in Raley v. Ohio, 360 U. S. 423, 436, to the effect that "There can be no question as to the proper presentation of a federal claim when the highest state court passes on it."

2d, at 390. To grant that class the right to challenge for prejudice and to deny it to those who are merely under investigation is to draw a line not warranted by the requirements of equal protection. I agree with the views of Judge Donworth, with whom Judges Finley, Hunter, and Rosellini concurred:

"I do not understand how it can be said, under the facts shown in this record, that the reason entitling a person in custody or held to answer for an offense to be investigated by an impartial and unprejudiced grand jury, does not apply equally well to appellant. It is axiomatic that all men are equal before the law and are entitled to the same rights under the same or similar circumstances." 56 Wash. 2d, at 528; 349 P. 2d, at 418.